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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 265.

GEORGE P. WEBSTER AND WILLIAM A. BRADY, APPELLANTS,

vs.

AUGUSTIN DALY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 17, 1893.

(15,380.)

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1 *Præcipe.*

Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER. } In Equity.

John A. Shields, clerk circuit court U. S., southern district of N. Y.:

You will please issue a subpœna to the defendants Webster, Brady and Miner, in the above-entitled action, returnable on the first Monday of July, 1889.

OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

Dated New York, May 20, 1889.

(Endorsed:) Circuit court U. S., southern district of N. Y. In equity. Daly *vs.* Webster & *al.* Præcipe for subpœna. Olin, Rives & Montgomery, solicitors for complainant. U. S. circuit court. Filed May 20, 1889. John A. Shields, clerk.

2 *Subpœna.*

The President of the United States of America to George P. Webster, William A. Brady, and Henry C. Miner, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of July, A. D. 1889, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Augustin Daly, and do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 20th day of June, in the year one thousand eight hundred and eighty-nine, of the Independence of the United States the one hundred and thirteenth.

JOHN A. SHIELDS, *Clerk.*

OLIN, RIVES & MONTGOMERY,
Complainant's Solicitors.

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Mon-

day of July, 1889, or the bill will be taken *pro confesso* against them.

J. A. S., *Clerk.*

(Endorsed:) U. S. marshal's office, S. D. N. Y. Received May 20, 1889. I hereby certify that on the 22nd day of May, 1889, at the city of New York, in my district, I personally served the within subpœna upon the within-named George P. Webster and William A. Brady by exhibiting to each of them the within original and at the same time leaving with each of them a copy thereof. Dated May 22nd, 1889. M. T. McMahon, United States marshal, southern district of New York, by Geo. H. Holmes, deputy. I hereby certify that on the 29th day of May, 1889, at the city of New York, in my district, I personally served the within subpœna upon the within-named Henry C. Miner by exhibiting to him the within original and at the same time leaving with him a copy thereof. Dated May 29th, 1889. M. T. McMahon, United States marshal, southern district of New York, by Geo. H. Holmes, deputy. U. S. circuit court. Filed Jun- 4, 1889. John A. Shields, clerk.

3 *Bill of Complaint.*

Circuit Court of the United States for the Southern District of New York. In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Augustin Daly, of the city of New York, a citizen of the State of New York and of the United States, brings this his bill of complaint against George P. Webster, a citizen of the State of ——, and William A. Brady, a citizen of the State of ——, and Henry C. Miner, a citizen of the State of New York, as defendants, and thereupon your orator complains and says:

That he is by profession a dramatic author and has been for several years past engaged in the business of composing, writing, and producing on the theatrical stage in the city of New York and other cities of the United States dramatic compositions commonly called plays.

And that the defendants George P. Webster and William A. Brady are engaged in giving theatrical representations at different theatres in the United States, and advertise such representations at the People's theatre, a public place of theatrical amusement in the city of New York, and are copartners in such business, composing the firm of Webster and Brady.

That before the first day of August, 1867, your orator invented, composed and wrote a dramatic composition called "Under the Gaslight, a romantic panorama of the streets and homes of New York, in five acts."

4 That said dramatic composition, and each and all of the incidents and scenes therein were the original conception and

invention of your orator, and said composition, in dialogue, scenery, characters, incidents and dramatic and theatrical effect, was wholly original with your orator, and was designed and suited for public representation.

That on the first day of August, 1867, your orator being then a citizen and resident of the United States of America, and being then the author and the sole and exclusive proprietor and owner of said dramatic composition, and the said composition then never having been printed, published, acted, performed or represented, took out a copyright therefor in the said United States, by depositing a printed copy of the title of said composition in the clerk's office of the district court of the United States for the southern district of New York, in which district your orator then and long before resided, and in all respects complied with the provisions of the existing acts of Congress relating to copyrights, which acts are hereinafter particularly mentioned, and received from said clerk, who then and there recorded said title as required by said acts, a certificate and record in the form required by such acts, containing the title of said composition, and the paper hereto annexed marked "A" is a true copy of such certificate and record, and of the record duly made by said clerk in that behalf, which said paper your orator prays may be taken as a part of this his bill.

And your orator further shows that subsequently to said last-named date he caused the said composition to be printed and published, and within three months from the date of such printing and publication, he caused a printed copy of said composition so printed and published to be delivered to and deposited with the clerk of said district court, and also to be delivered to and deposited in the Library of Congress at Washington, for the use of said Library, as required by said acts of Congress.

5 And your orator gave information of the copyright of said composition being secured to him by causing to be printed and inserted in the several copies of each and every book and edition of such book or composition so published and printed, on the title page thereof, or on the page immediately following, the following words, viz: "Entered according to act of Congress in the year 1867 by Augustin Daly in the clerk's office of the district court of the United States for the southern district of New York," and complied with all provisions of said acts of Congress necessary to secure the benefit of said acts of Congress to your orator.

And your orator shows that in and by the aforesaid proceedings of your orator he intended to obtain, hold and possess, and did thereby obtain, hold and possess, and now holds and possesses by virtue of the act of Congress, approved February 3, 1831, and the acts amendatory thereof and supplementary thereto, not only the sole and exclusive right and liberty to print and publish such dramatic composition and book, but also the sole and exclusive right to act, perform or represent the said dramatic composition or play, and to cause it to be acted, performed or represented on any stage or public place, during the whole period for which the said copyright was obtained.

And your orator further shows that the said dramatic composition was produced, performed and represented for the first time in any place, or on any stage on the twelfth day of August, 1867, under his direction and for his benefit, at the New York theater, a public place of theatrical amusement in the city of New York, and was there and thenceforward represented for eight consecutive weeks, and met with great favor and success, attracting crowds of persons, and being pecuniarily profitable to your orator to a large amount, and gained for your orator wide fame as the author
6 thereof. And that since the twelfth day of August, 1867, aforesaid, the said play of "Under the Gaslight" has been very frequently represented in cities in all parts of the United States upon the stage, and has been produced both by this complainant and by other persons under his license, and has been a very successful and popular play, and has been seen by great numbers of persons, and that your orator has received as profit from the production of said play, and as fees from different persons performing the same under his license, very large sums of money in each and every year from the year 1867, aforesaid, to the present time.

That the cause of such success, fame and profit was the originality and extraordinary novel nature of the principal scenes and incidents of said composition, and particularly the scene and incident in the end of the third scene of the fourth act of said composition, commonly called (after being so publicly performed,) the "railroad scene" or sensation, in which one of the characters in said composition is represented as secured by another of the characters and laid helpless upon the rails of a railroad track, in such a manner, and with the presumed intent that the railroad train momentarily expected shall run him down and kill him, and just at the moment when such a fate seems inevitable, another of the characters in the composition contrives to reach the intended victim, and to drag him from the track as the train rushes in and passes over the spot.

And your orator shows that this incident and scene was entirely novel and unlike any dramatic incident known to have been theretofore represented on any stage or invented by any author before your orator invented and composed the same in his said composition, and produced and represented the same, as aforesaid.

And the said railroad scene or sensation was, as soon as produced and represented by your orator, and ever since has been and
7 is now regarded, whenever it has been witnessed, to be one of the most novel, startling and attractive incidents ever represented on the public stage; that the playing of the said composition and of said railroad scene or sensation caused the same to become famous in all parts of the United States and Canada and in England, and the same composition was repeatedly produced and represented by and for the advantage of your orator in many cities and towns of the United States and Canada, and everywhere to the great profit of your orator.

And your orator shows that the chief value of said composition and its popularity depend upon the said railroad scene or sensation

contained in it, and upon the representation of said scene in said composition only and in no other dramatic composition whatever.

And the printed book hereto annexed marked "B" is a true copy of the whole of said composition, and the said railroad scene is found at pages 42 and 43 of said book, and your orator prays that said printed book may be taken and regarded as a part of this his bill.

And your orator further shows that soon after such production and representation and printing of said composition in the United States, one Dion Boucicault, a dramatic author and actor and theatrical manager, a native and a subject of Great Britain, as your orator believes, and residing in England, procured a copy of said composition by some means and without the knowledge, privity or consent of your orator, prepared therefrom a play, which he called "After Dark," in which said play said Boucicault, in order to make it attractive and to gain pecuniary profit therefrom, introduced several of the scenes and incidents of your orator's said composition varying them all slightly, but following in them the invention and plan of your orator's said composition, in a manner which was intended to differ from it only slightly, so as colorably to be a
8 different work, when it substantially retained the attractive features of your orator's said composition, and among other scenes included the said railway scene of your orator's play, substituting for the surface railroad an underground railroad, for the rescue of the victim to be killed on the railroad a man for a woman, for the railroad station in which the rescuer is confined a cellar, and for the breaking down a door to escape and rescue the victim the breaking down a door in a wall; and that Henry D. Palmer and Henry C. Jarrett, citizens of the State of New York, made preparations to produce the said play of "After Dark," by Dion Boucicault, at a theater in the city of New York; that thereafter your orator presented to the United States circuit court in the second circuit for the southern district of New York, in equity, his certain bill of complaint alleging the foregoing facts, and prayed for an injunction restraining the defendants from performing your orator's railroad scene in his play of "Under the Gaslight" in the said drama called "After Dark;" that a motion by your orator for a provisional injunction was duly made in the said circuit court for the southern district of New York, and the same having been duly heard and considered, the injunction prayed for by your orator was granted, and the said Palmer and Jarrett were enjoined and forbidden from the public performance or representation of the railroad scene in the play of "After Dark," or of any scene in substance the same as the railroad scene in either of the two plays.

That after the said decision of the said circuit court for the southern district of New York, your orator has from time to time received from persons performing the said play of "After Dark," by Dion Boucicault, in different cities of the United States, royalties for the use of the said railroad scene, and has also received from other persons performing different plays and dramas, in which was a
9 railroad scene imitated from or like the railway scene in the

said play of "Under the Gaslight," large sums of money as royalties for permission and license to use such scene.

And your orator further shows that at the present time the defendants George P. Webster and William A. Brady, with full knowledge of your orator's rights in the aforesaid drama and the aforesaid scene, have been in divers cities of the United States producing the said play of "After Dark," and using and producing said railway scene in "After Dark," and several of the scenes and incidents of your orator's play, varying them slightly, but following the plan of your orator's play in a manner which was intended to differ from it only slightly, so as colorably to be a different work, while substantially retaining the attractive features of your orator's play, and representing, with only colorable variations, the said railroad scene of your orator's play, representing a railroad running under ground in the city of London, substituting for the victim to be killed on the railroad a man tied by a rope, and suspended from an aperture in the top of the tunnel and hanging over the rail, where he would be struck by the engine, instead of a man tied and laid upon the track, as in your orator's said play, and for the rescuer of the victim to be killed on the railroad a man shut up in a wine cellar and breaking his way through a window or wall into the tunnel, instead of breaking a way out of a switch-tender's house, as in your orator's said play; that the said scene in the play "After Dark," as written by the said Dion Boucicault and produced by the defendants, is a palpable imitation of your orator's said railroad scene, and is plagiarized therefrom and put into the play of "After Dark," by the said defendants for the purpose of obtaining the pecuniary benefit which might otherwise result to your orator from the representation of his play.

10 And your orator further shows that the said play of "After Dark" has been performed by the defendants Webster and Brady in different parts of the United States without your orator's consent, to the great profit of the defendants Webster and Brady, and was indebted for its success and profit to the imitation of the said railway scene; that the said defendants Webster and Brady have organized a company to perform the said play of "After Dark," with the said railroad scene, in different cities of the United States; that they have agreed and confederated with the defendant Henry C. Miner to produce the said play in the city of New York, and that the defendants are intending and have announced their purpose to perform such play of "After Dark" publicly on the stage at a theater in the city of New York, in the southern district of New York, to wit: the People's theater, during the week beginning on the 20th day of May, 1889, without the consent of your orator; that such play and plagiarism of the said railroad scene has recently been performed, as your orator is informed and believes, at a theater in the city of Philadelphia, in the State of Pennsylvania, to wit: the National theater.

And your orator further shows that the performance of the said play of "After Dark" at different cities where the play of "Under the Gaslight" is about to be performed, seriously injures your orator

and lessens the value of the said play of "Under the Gaslight," and diminishes the amounts to be received by your orator from the licensing of the said play, and that such injury cannot be accurately ascertained and computed, and that compensation therefor cannot be made by damages, and that your orator, by reason of the said performance of the said play by the defendants, and by their announcement and advertisement thereof with the said railroad scene therein, is irreparably damaged.

11 All of which actings, doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and inasmuch as your orator can only have relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, and to the end that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may true, full and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and they thereto severally and specifically interrogated, and that the said defendants be decreed to render a full and true account to your orator of all money and profits received from or by reason of the said performances of the said play of "After Dark" and of the railroad scene therein, and that the said defendants may be enjoined and restrained from performing the said play or the said railroad scene, or any other colorable imitation or adaptation of your orator's said play of "Under the Gaslight," and from advertising or representing the same; and in order that your orator may have such other and further relief as may be just, may it please your honors to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said George P. Webster, William A. Brady and Henry C. Miner, commanding them and each of them, on a day therein to be named and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform and abide such further order, direction and decree as may be made against them and each of them. And may it please your honors to grant unto your orator the writ of injunction, issuing out

12 of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directed to the said George P. Webster, William A. Brady and Henry C. Miner, defendants, commanding, enjoining and restraining them, the said defendants, and each of them, and their servants, attorneys, agents and representatives, from performing the said play of "After Dark," or any colorable imitation or representation thereof, or of the railroad scene therein, or of your orator's said play of "Under the Gaslight," or of the railroad scene in said play, and from advertising or announcing any representation or performance thereof.

OLIN, RIVES & MONTGOMERY; *Solicitors.*

STEPHEN H. OLIN, *Of Counsel.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Augustin Daly, being duly sworn, says that he is the complainant named in the above bill; that he has read the same and is acquainted with the facts therein stated; that said bill and the matters therein stated are true to the knowledge of deponent, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

AUGUSTIN DALY.

Sworn to before me, this 19th day of May, 1889.

GEO. B. HEATH,
Notary Public, N. Y. Co.

13 (COPY EXHIBIT "A.")

[SEAL.]

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the first day of August, anno Domini 1867, Augustin Daly, of the said district, has deposited in this office the title of a book or dramatic composition, the title of which is in the words following, to wit:

UNDER THE GASLIGHT,

A Romantic Panorama of the Streets and Homes of New York,

BY

AUGUSTIN DALY,

Author of "Leah, the Forsaken," "Griffith Gaunt," "Taming a Butterfly," &c., the right whereof he claims as author and proprietor.

In conformity with an act of Congress, entitled "An act to amend the several acts respecting copyrights."

(Signed) GEO. F. BETTS.
Clerk of the Southern District of New York.

(By consent of solicitor for defendants Webster and Brady the play entitled "Under the Gaslight," which is marked "B," and annexed to and made part of the bill of complaint, is not printed as part of complainant's record, but complainant is permitted to annex to his record a printed copy of said play with the like force and effect as though printed as a part thereof.)

(Endorsed:) U. S. circuit court, southern dist. of New York. Augustin Daly ag'st George P. Webster, William A. Brady, and Henry C. Miner. Bill of complaint. Olin, Rives & Montgomery, solicitors for complainant, 32 Nassau street, New York city. U. S. circuit court. Filed May 20, 1889. John A. Shields, clerk.

14 *Complainant's Replication to Answer of Defendants George P. Webster and William A. Brady.*

Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.

The replication of Augustin Daly, complainant, to the answer of Webster and Brady, defendants.

This repliant saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto says that he will aver, maintain and prove his said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue and insufficient to be replied unto by this repliant. Without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

OLIN, RIVES & MONTGOMERY,
Complainant's Solicitors.

(Endorsed:) United States circuit court, southern district of N. Y. Augustin Daly *vs.* George P. Webster *et al.* Replication. Olin, Rives & Montgomery, complainant's solicitors, 32 Nassau street, New York city. U. S. circuit court. Filed Jul- 30, 1889. John A. Shields, clerk.

15 *Complainant's Replication to Answer of Defendant Henry C. Miner.*

Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.

The replication of Augustin Daly, complainant, to the answer of Henry C. Miner, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies

of the said answer, for replication thereunto says, that he will aver and maintain and prove his said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of said defendant is uncertain, untrue and unsufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

OLIN, RIVES & MONTGOMERY,
Complainant's Solicitors.

(Endorsed:) U. S. circuit court, southern district of N. Y. Augustin Daly against George P. Webster *et al.* Replication to answer of defendant Miner. Olin, Rives & Montgomery, complainant's solicitors, 32 Nassau street, New York city. U. S. circuit court. Filed Dec. 11, 1889. John A. Shields, clerk.

16 *Complainant's Testimony.*

United States Circuit Court for the Southern District of New York.
In Equity.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.
} Before Samuel A. Blatchford, Esq., Examiner.

Testimony taken on behalf of the complainant, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before Samuel A. Blatchford, Esq., one of the standing examiners of the court, at his office, 16 Exchange place, New York city, Monday, December 23d, 1889, at 11 a. m.

Appearances: George L. Rives appears for the complainant. David Gerber, for the defendants Webster and Brady.

Counsel for complainant produces a stipulation extending the time to take testimony to the 18th of January, 1890; also notice to take testimony for today at 11 o'clock with admission of service by solicitors for defendants.

17 These are marked "Complainant's Exhibits 1 and 2 of December 23d, 1889, S. A. B., examiner."

It is stipulated by counsel that the testimony may be taken by the examiner through a stenographer and that the notes when written out shall be signed by the witnesses with the same force and effect as if the testimony had been taken in the handwriting of the examiner.

It is stipulated that the closing of the testimony shall be and is extended until thirty days after notice given by either party to the other, that the testimony shall be closed.

Counsel for complainant produces in evidence, bill of complaint in equity in the circuit court of the United States for the southern district of New York, filed by Augustin Daly against Henry D. Palmer and Henry Jarrett, November 10th, 1868.

The bill of complaint is marked "Complainant's Exhibit Daly *vs.* Palmer, Bill of Complaint."

Objected to on the ground that it is immaterial, irrelevant and incompetent; that none of the parties in this action were parties to that suit; that the bill is simply an *ex parte* statement by the complainants in that action; that there has been no final decree in that suit and that counsel cannot offer in evidence one paper of a record.

Complainant's counsel offers in evidence notice of motion, affidavits and subpœna filed December 17th, 1868; also affidavits of Henry D. Palmer, A. B. Clark, William H. Whalley, Thaddeus W. Meighan, Leon John Vincent and Charles White and others, all filed December 16th, 1868, and also order for injunction, filed December 17th, 1868.

These papers are marked respectively "Daly *vs.* Palmer, Notice of Motion, Affidavits and Subpœna, S. A. B., examiner."

18 "Complainant's Exhibit Affidavit Henry D. Palmer, S. A. B. examiner."

"Complainant's Exhibit Affidavit of Clark & Whalley, S. A. B. examiner."

"Complainant's Exhibit Affidavit of Meighan, S. A. B. examiner."

"Complainant's Exhibit Affidavit of Vincent, S. A. B. examiner."

"Complainant's Exhibit Affidavit of White and Others, S. A. B. examiner."

"Complainant's Exhibit Daly *vs.* Palmer Order of Injunction, S. A. B. examiner."

Counsel for defendants objects to the papers offered in evidence and each of them upon the grounds set forth in his objection to the bill of complaint offered in evidence.

AUGUSTIN DALY, being duly sworn by the examiner, and examined by Mr. Rives, counsel for complainant, testifies as follows:

Q. 1. You are the complainant in this suit, Mr. Daly?

A. Yes.

Q. 2. What is your profession or occupation?

A. Theatrical manager, I suppose, and dramatic author.

Q. 3. And has been for how long?

A. For twenty-three years or more—dramatic author for twenty-five years, manager for twenty-three years.

Q. 4. Do you know the defendants George P. Webster and William A. Brady?

A. Not personally.

Q. 5. Do you know their firm of Webster & Brady?

A. Only as performing a piece called "After Dark."

19 Q. 6. Do you know the piece called "Under the Gaslight"?

A. Yes.

Q. 7. Tell us what you know about that piece?

Objected to as being too general—not calling for a specific fact.

A. It was composed and written and produced by me; composed in the spring of 1868 or 1867—I am confused about those few years—I composed several pieces about that time—it is on the play.

It is published in the printed book when the piece was produced, it was composed and written in the spring of the year, when it was produced in August of the year 1867 or 1868.

Motion made to strike out this answer as not responsive and not called for by any question to which counsel could interpose a proper objection.

Q. 8. Where was the play first produced?

A. In the city of New York, in a theatre called the Worrell Sisters theatre, on Broadway, opposite the New York hotel.

Q. 9. When was it produced?

A. I will have to refresh myself about the year—in August.

Q. 10. Look at the printed book annexed to the bill of complaint and after looking at that see if your memory is refreshed?

A. August 12, 1867.

Q. 11. How long, if you remember, did that play run at that time?

A. Something over a month, in the first run as we call it.

Q. 12. How was it as to success or otherwise?

A. Very great success, at that time it was what is called a sensational success.

Q. 13. Was it ever performed afterwards, and when?

20 A. After the New York run, in Boston. It was returned to New York and revived the winter of the same year.

Q. 14. The winter of 1867 and 1868?

A. Yes.

Q. 15. Has it ever been produced since that time?

A. Frequently.

Q. 16. By you or others?

A. By myself and others; I licensed it to other managers and stars; I have produced it under my own management on several occasions.

Q. 17. Has the play been printed?

A. Yes.

Q. 18. Where were you residing in the spring and summer of 1867?

A. Horatio street, New York.

Q. 19. Of what city were you a citizen?

A. This city.

Q. 20. Did you, before the printing of this book, deposit a copy

of the title in the clerk's office of the district court for the southern district of New York.

Objected to, as the best evidence is the title itself, and as incompetent.

A. I did.

Q. 21. Did you also deposit a copy of the book in the clerk's office?

Objected to on the ground of being incompetent, the best evidence is the record.

A. I don't recollect.

Q. 22. Did you deposit a copy of that book in the office of the Librarian of Congress?

Objected to on the same grounds as before.

21 A. I believe I did.

Counsel for complainant offers in evidence a certified extract from the records of the clerk of the district court for the southern district of New York, showing the deposit of the title of the book "Under the Gaslight, &c.," and also of the book itself, on the 1st of August, 1867.

Objected to as being incompetent, irrelevant and not a proper mode of making proof of compliance with the acts of Congress entitled "copyright," and because the certificate is not certified by the proper officer, and that the book should be annexed to complete certificate.

This is marked "Certificate of deposit in clerk's office, S. A. B., examiner."

Counsel for complainant also offers in evidence a certificate from the Librarian of Congress showing the deposit in his office of copy of dramatic composition entitled "Under the Gaslight," which is marked "Certificate deposit Librarian of Congress."

Objection on the same grounds as the objection to the former certificate, and the additional objection that it does not purport to be the certificate of deposit of the dramatic composition in question, and to complete the certificate the composition referred to should have been annexed.

Q. 23. Look at the printed book annexed to the original bill herein, and say whether that is a copy of the play to which you have referred?

22 A. Yes, sir.

Q. 24. Is that printed by your authority?

A. By my permission, yes.

Q. 25. This book bears the notification "Entered according to act of Congress in the year 1867 by Augustin Daly in the clerk's office of the district court of the United States for the southern district of New York." Do all the copies of this play, printed with your permission bear a similar certificate, so far as you know?

A. They do.

Q. 26. Have the persons who produced the play of "Under the Gaslight" by your license, paid you any fees for that?

Objected to as incompetent and immaterial.

A. They have unless they were excused.

Q. 27. Has it been a source of profit to you?

A. Yes, one of my chief sources of profit for many years.

Q. 28. Can you state in a general way what is the cause of the profitable nature of this play?

Objected as being incompetent, calling for an opinion and irrelevant.

A. The situation in the fourth act of the play, which is generally known as the railroad situation, being the chief effect of the play, is the reason of its repeated revival, and therefore constitutes the attraction.

Q. 29. What do you mean by the railroad scene or situation?

A. A situation in which one person is put in peril of life by being placed upon a railroad track, and upon the approach of the train is seen by another party who rescues him—who dashes
23 from a concealed place and rescues the other person, thus saving the life of the person in peril. This is what is called the railroad sensation.

Q 30. Is that the scene third of act fourth of the play?

A. The last scene of the fourth act, yes sir.

Q. 31. Being at pages 40 to 43 of this printed book?

A. Pages 40, 41, 42 and 43 of the printed book annexed to the bill.

Q. 32. What is the name of the character who is locked up concealed?

A. Laura Cortland.

Q. 33. Who is the person in danger of his life?

A. An individual named Snorkey.

Q. 34. The printed book annexed to the bill contains in italics, at pages 40 to 43, a number of stage directions, do you know whether those correctly represent the manner in which the scene is generally presented on the stage?

A. They do.

Q. 35. Have you had occasion to look into the dramatic literature of your own and other countries to any great extent?

A. At times.

Q. 36. Are you familiar generally with dramatic literature and with the drama as performed here and elsewhere?

Objected to as irrelevant, and as not a proper mode of showing the witness to be an expert.

A. Fairly familiar.

Q. 37. So far as you are aware, do you know of any play produced previous to August, 1867, which represented a scene in any respect resembling the railroad scene in "Under the Gaslight?"

A. There is no scene in any play previous to that time which contains that combination of circumstances.

24 Q. 38. Or anything like it?

A. Or anything like it.

Q. 39. Have you ever seen a play called "After Dark," by Dion Boucicault?

A. I have.

Q. 40. Do you know when it was first produced?

A. I think it was produced in England the year following the production of "Under the Gaslight." About 1868.

Q. 41. Does that play in any respect, and if so in what respect, resemble "Under the Gaslight?"

Objected to unless the question is limited to the play as performed by the defendants, and to the times und places mentioned in the bill.

A. One scene in the play closely resembles the railroad situation in "Under the Gaslight."

Q. 42. What scene? Do you remember what part of the play this occurs in?

A. I don't remember the act—it is the finish of one of the acts of the play—I think the act before the last.

Q. 43. What is the scene in question? What does it represent and what do the characters do?

Objected to upon the same grounds as objection to question 41.

A. The scene represents an old man lying on the track, another person breaking through a wall in time to rescue him from the approaching train which threatened him with death.

Q. 44. Where is the railroad supposed to be?

A. In "After Dark" it represents an underground railroad, and in "Under the Gaslight" a surface road.

Q. 45. Do you remember the names of the characters in "After Dark" who took part in this scene respectively?

25 A. I don't recall them.

Q. 46. When, if you know, was that play of "After Dark" first announced to be performed in the United States?

Objected to as immaterial.

A. I don't remember the first announcement.

Q. 47. Did you take any legal steps with regard to the production of "After Dark?"

Objection, as immaterial unless the proceedings were taken against these defendants, or they were parties to the suit.

A. I did.

Q. 48. What proceedings did you take?

Objection, upon the ground that the proceedings are the best evidence, and that it is immaterial in this action.

A. I have brought suit to enjoin the production of the play.

Q. 49. Where was the play announced to take place?

A. Niblo's Garden, in New York.

Q. 50. Against whom did you bring that suit?

A. The managers of that theatre, Jarrett and Palmer; I don't know whether Boucicault was a party or not.

Q. 51. I show you "Complainant's Exhibit Bill of Complaint," in Daly *vs* Palmer; is the suit in which that bill was filed the proceeding to which you have just referred?

A. It is.

Q. 52. Was the play "After Dark" produced in the United States subsequent to November, 1868?

Objected to as immaterial.

26 A. Yes, frequently.

Q. 53. Have you ever received any royalties or license fees of persons producing that play, by persons in the United States?

Objected to as immaterial, unless the royalties or compensation were paid by the defendants.

A. I have licensed persons desiring to play "After Dark;" I have given them permission to use the railroad scene in connection with that drama.

Q. 53. Have those license fees amounted to considerable sums of money?

A. At times.

Q. 55. And they have been received from more than one person?

A. Yes.

Cross-examination of the witness is postponed until the 30th of December, 1889, at 10 a. m.

Counsel for complainant calls upon counsel for Webster & Brady to produce two letters written them by complainant's solicitors.

Counsel for defendants states that he has looked for those letters and does not find them among his papers.

Counsel for complainant offers in evidence a letter written by the defendant William A. Brady, dated February 17th, 1889, and received by complainant's solicitors.

Objected to, not upon the ground that there has been no formal proof of receipt or of the genuineness of the signature, but that it is immaterial, irrelevant and incompetent.

Letter marked "Complainant's Exhibit Brady Letter of February 17, 1889."

27 Complainant's counsel offers in evidence a letter written by complainant's solicitors to William A. Brady, dated the 20th of February, 1889.

Objected to on the same grounds as to foregoing exhibit letter marked "Complainant's Exhibit Solicitor's Letter, February 20th, 1889."

Complainant's counsel offers in evidence a letter written by William A. Brady and received by complainant's solicitors, dated February 24th, 1889.

Objection same as before.

Marked "Brady letter of February 24th, 1889."

Complainant's counsel offers in evidence a letter written by complainant's solicitors to W. A. Brady, dated March 1st, 1889.

Objected to upon the same grounds as before to former letter, and as being an *ex parte* statement of the solicitors in their behalf.

Marked "Complainant's Exhibit Solicitor's Letter of March 1st, 1889, S. A. B., examiner."

HAROLD SWAIN, called on behalf of the complainant, and being duly sworn, testifies as follows:

Direct examination by Mr. RIVES:

Q. 1. What is your residence?

A. 335 West Thirty-fourth street, New York city.

Q. 2. What is your age and occupation?

28 A. 22; student at law and law clerk.

Q. 3. Where?

A. At the office of Olin, Rives and Montgomery, 32 Nassau street, New York city.

Q. 4. Have you ever seen a play performed called "After Dark?"

A. I have.

Q. 5. Where was the first place you saw it performed?

A. At Philadelphia.

Q. 6. When?

A. Some time this current year.

Q. 7. At what theatre was it, do you remember?

A. I don't remember the name of the theatre.

Q. 8. Where did you sit in the theatre?

A. I sat five or six rows back from the orchestra, a little to the right of the centre.

Q. 9. Could you see the stage well from where you sat?

A. Very well.

Q. 10. Do you remember in any portion of the play where the parties were in an underground railroad tunnel?

A. I do.

Q. 11. Please describe what went on on the stage in that scene and in the scene immediately before it.

Objection on the grounds, 1st, that that is not the infringement charged in the bill of complaint. 2d, that there is no charge in the bill of a violation of complainant's rights by reason of performances in Philadelphia. 3d, that it has not been shown that the performances were those conducted by the defendants or authorized by them.

A. One of the scenes preceding the one in the underground railroad tunnel was in a concert hall; there is a character in

29 the play called Old Tom who sat pretending to be drunk; there is a character called Gordon Chumley who was drugged, and when Old Tom sprang up to help him he was seized upon and put down a trap-door of the stage; Gordon Chumley, who was now

nearly unconscious from the effect of the drug, was put down another trap-door; the next scene shows the underground tunnel which I have spoken of; the next one shows an underground chamber in which Old Tom was groping around trying to find out where he was; he seemed to hear noises, climbed upon a sort of window-lattice work and said that he saw them lowering something into an adjoining apartment, which was an underground railroad tunnel; he recognized this person as Gordon Chumley and seemed to appreciate what had happened upstairs; he made some excited remarks, about wishing to save his old friend, and his seeming inability to do so; at this time the whistle of the train was heard; he seemed to appreciate that his friend Gordon Chumley was in imminent danger of being killed, and finally found an iron bar fastened to the wall which he made great efforts to detach, all the while speaking very excitedly of his seeming inability to save Gordon Chumley; finally the bar fell from its fastenings with a resounding ring and Old Tom rushed off the stage to the right.

The scene now changed to the underground railroad tunnel, the body of Gordon Chumley was seen hanging by a rope fastened under his arms. He seemed to be unconscious and the body was twisting, the whistle of the train was heard approaching. In the meantime blows were heard on the side of the arched roof of the tunnel, bricks began to fall, and the body of Old Tom was seen trying to get through the *whole*; meantime the sounds from the engine were louder and louder; as soon as the hole was large enough for him to get his body through, Old Tom jumped down, rushed for the body of Gordon Chumley, running just in front of the engine which had now appeared; he seized the body, pulled it toward the audience just in time to avoid its being struck by the engine of the train, which, with one car attached, went whistling and puffing across the stage.

Q. 12. How far from the floor of the stage was the body of Gordon Chumley suspended?

A. About a foot.

Q. 13. Is that about a foot off the ground?

A. Yes.

Q. 14. Did you ever see, in the city of New York, any announcement of the play called "After Dark"?

A. I have.

Q. 15. What is this I now show you?

Objection upon the ground that whatever it is, it speaks for itself and does not need the explanation of the witness as to what it is.

A. It was a photograph of a bill-board, I have seen in the city of New York?

Q. 16. When?

A. Some time during or about the week of May 20th.

Q. 16. Which year?

A. 1889.

Counsel for complainant offers this photograph in evidence.

Objection as being incompetent, it not yet being shown that this was by the authority of the defendants or any of them and that there is no proof of the accuracy of the photograph.

Photograph is marked "Complainant's Exhibit Photograph, S. A. B., examiner."

Q. 18. Whereabout did you see the bill of which this is a copy?

31 A. Near the corner of Grand street and Bowery.

Q. 19. When with reference to the time of seeing the play in Philadelphia, did you see this bill?

A. About two weeks after.

Q. 20. Did you see similar bills to this in Philadelphia, do you remember?

A. I don't remember, except that I think I saw bills at the entrance to the theatre, which I think were quite similar to that.

Q. 21. Did you get any programme of the performance when you were at the theatre in Philadelphia?

A. I did.

Q. 22. Look at the paper now shown you and say what that is.

A. It is a programme very similar to the one which I received in Philadelphia, so far as the real part of the programme is concerned—the programme of the play.

Q. 23. What do you mean by the real part of the programme?

A. The cast of characters seem to be the same—the synopsis seems to be the same, and the advertising of the play in the beginning seems to be the same.

Q. 24. How about the names of the company producing it, Webster & Brady?

A. The same.

Counsel for complainant offers this programme in evidence.

Objection as incompetent, irrelevant and it does not purport to be the programme received by the witness and there is no proof where the programme came from.

The programme is marked "Complainant's Exhibit Programme of May, 1889, S. A. B., examiner."

32 Q. 25. Have you ever seen the play since you saw it in Philadelphia?

A. I have.

Q. 25. When?

A. Last Friday night.

Q. 27. Where?

A. At the Grand Opera House, New York city.

Q. 28. In what respect if any, did the play produced in the Grand Opera House, in New York city, differ from the one in Philadelphia?

Objected to on the grounds:

1. It was after the commencement of this suit and no infringement can be predicated upon that performance.

2. It is not pretended in the bill of complaint that the perform-

ance to which the witness has his attention called was similar to the performances complained of in this action and that it was after the decision of Judge Wallace holding the copyright invalid.

In the play I saw last week Gordon Chumley is not put through any trap-door but was carried off the stage insensible. Old Tom went groping in this dark underground room and did not climb up the lattice window, but seemed to look out of a keyhole or aperture in the door or wall. In the next scene the body of Gordon Chumley was stretched at full length on the track, but was rescued in substantially the same manner, except that Old Tom in rescuing him seemed to fall down as he was pulling him off the track and come even nearer to being run over by the engine than before.

Q. 29. Do you now recall the name of the theatre in Philadelphia at which you saw the performance of "After Dark?"

A. It was the National theatre.

33 Q. 30. Did you get a programme at the Grand Opera House last week when you went there?

A. I did.

Q. 31. Look at the paper now shown you and say if that is the paper you received.

A. It seems to be.

Counsel for complainant offers this programme in evidence, of Dec., 1889.

Objected to as being incompetent, irrelevant and immaterial, having no reference to the infringement charged in the bill, and purporting to be the programme of a performance had after the commencement of this suit and after the decision of Judge Wallace denying the motion for injunction.

The programme is marked "Complainant's Exhibit Programme of December, 1889, S. A. B., examiner."

Cross-examination by Mr. GERBER:

X Q. 32. Mr. Swain, at the times referred to on your direct examination you were a clerk in the office of Olin, Rives & Montgomery?

A. I was.

X Q. 33. You left New York for the purpose of witnessing the play in Philadelphia?

A. I did.

X Q. 34. How often did you witness it?

A. In Philadelphia, once.

X Q. 35. Can you tell me the day of the week?

A. Friday night, I think.

X Q. 36. Can you tell the month?

A. It was the month of May.

X Q. 37. Can you tell me the date of the month?

A. Not without some calculation.

X Q. 38. Between the time of seeing the performance in Phila-

delphia and witnessing the performance at the Grand Opera House, last week, you didn't see the performance of this play?

34 A. I did not.

X Q. 39. "Complainant's Exhibit Programme of May, 1889," is not the programme—the copy of programme you received in Philadelphia?

A. No.

X Q. 40. It is not the programme which was given you at any performance of the play you witnessed?

A. It is not.

X Q. 41. "Complainant's Exhibit Photograph" does not truly represent the scene as you witnessed it in Philadelphia?

A. It does not.

X Q. 42. Has "Complainant's Exhibit Programme of December, 1889," been in your possession from the time you received it, as you say, at the performance until the present time?

A. Substantially, yes.

X Q. 43. What do you mean by substantially?

A. I mean I took the programme from my pocket, and placed it in the safe of Olin, Rives & Montgomery with other valuable possessions of mine; that I took the same programme from the safe of Olin, Rives & Montgomery and carried it to this office.

X Q. 44. Was the programme sealed in any envelope?

A. It was not.

X Q. 45. The safe was open to access by any clerk in the office, was it not?

A. Yes, sir.

X Q. 46. And the programme not remain under lock and key?

A. Not all the time.

X Q. 47. Now, Mr. Swain, did you take any note or memorandum of the incidents of the performance in Philadelphia?

A. Yes.

X Q. 48. Where is it?

A. I made some memoranda on the programme which I then received.

35 X Q. 49. Where is that?

A. I don't know.

X Q. 50. Did you destroy it?

A. I did not destroy it.

X Q. 51. What became of it?

A. I don't know.

X Q. 52. When did it leave your possession?

A. Shortly after I returned from Philadelphia.

X Q. 53. You gave it to whom?

A. I gave it to—I am sure I left it in the room of Mr. Olin—in his private room.

X Q. 54. That is the last you saw of it.

A. The last I saw of it.

X Q. 55. Prior to coming over here to testify today did you refresh your recollection as to the incidents of this play and the scenes you have referred to?

A. I read the affidavit which I made shortly after returning from Philadelphia, I also went to see the performance at the Grand Opera House.

X Q. 56. My question is limited to your testimony referring to the Philadelphia performance.

A. Yes.

X Q. 57. And you understood my question?

A. Yes.

X Q. 58. You made an affidavit which was used upon the motion for injunction in this matter, did you not?

A. Yes.

X Q. 59. And that is the affidavit which you say you read before you came here, to refresh your recollection?

A. That, or a copy of it.

X Q. 60. Have you any clear recollection of the incidents of that scene independently of that affidavit?

A. I have.

X Q. 61. Now, tell us the first scene of that play.

A. I don't believe I can do that.

X Q. 62. Tell us the last scene of the play.

36 A. I don't believe I can exactly say what the last scene was of the play.

X Q. 63. Can you tell how the second act opens; can you tell how the second act closes, or can you tell how the third act opens?

A. I have very little recollection as to the play when referred to by acts and scenes, except as stated in my testimony.

X Q. 64. Is it not a fact, Mr. Swain, that prior to coming here you read your affidavit, and simply testified to the facts contained therein.

A. It is not.

X Q. 65. And your testimony in regard to that scene of the performance in Philadelphia is entirely based upon recollection?

A. Entirely.

X Q. 66. You said that you are entirely unable to give us any other scene of the play but the one you have testified to?

A. I don't believe I said that.

X Q. 67. Tell us the entire play as you recollect it—I want it based simply upon the Philadelphia performance?

A. There is a character in it called Gordon Chumley and a character called Old Tom, who seems to have been a man who was once a military man of some importance, who had a wife and child—the child's name was Fannie Dalton, Old Tom's real name was Frank Dalton at this time. Gordon Chumley had been appointed a trustee under the will of a man who did not appear in the play, but who had left his property to a nephew of his, on the condition that he would marry a cousin of the nephew's, I think.

Mr. SWAIN: Can I look at the programme?

Mr. GERBER: No, I am trying your recollection.

37 There was a Jew who kept a gambling hall and a concert hall I have referred to, and who had got control of a piece

of forged paper, which the nephew that I have spoken of had issued during the lifetime of his uncle. Advertisements read from a paper offered a reward of fifty pounds, I think, for the whereabouts of this nephew. This nephew had been in the control, you might say, of this Jew. The Jew had lead him to believe that he would protect him in every way he could from being prosecuted on account of this forgery, and seemed to be intending by scaring him to keep the nephew from coming forward of his own accord and answering this advertisement. About this time he met a man called Richard Knatchbull, who put the idea into his head that a great deal more money could be obtained from this piece of paper that the Jew had intended getting. This Richard Knatchbull had run away with the wife of Frank Dalton, and had placed the daughter of Frank Dalton and this wife with the Jew, who had brought her up as an attendant at his concert hall. This nephew, who was driving a night hack under the general protection of this Jew, had married the daughter of Frank Dalton. Old Tom had cast aside his own name, and was a wreck from drink and was employed in carrying around advertisements of the concert hall. He lived in a sort of den underneath the river—or on the side of the river under the arches of the bridge—something of that sort, and had lost all track of his wife and daughter. The Jew and Richard Knatchbull had brought it about that the nephew would leave his wife—would desert his wife and would marry the prospective heiress. The wife was made to believe that she was doing a kindness to her husband and following his wishes by allowing him to desert her.

38 In the meantime they told the nephew that certain parties had the forged paper who would only give it up by the payment of a large portion of his estate, and the young man made an agreement to pay this at the time he was married.

In the meantime Richard Knatchbull met the wife, who was his own daughter—I should say that this was his stepdaughter, the daughter of Old Tom—met this girl at the side of the river and tried to drown her. Old Tom coming along in a boat, rescued her and took her to his own home.

In the meantime Gordon Chumley and Old Tom had recognized each other as old friends; Gordon Chumley was very glad to be of service to Old Tom by obtaining a situation for the girl, Old Tom's daughter, in the employ of the prospective heiress, whom by the way Chumley was very much in love with himself. It was about this time that Old Tom learned that the girl's name was Fannie Dalton, and saw that she must be his daughter. She went into the employ of the woman who was thus about to marry her own husband, that is, Fannie Dalton's husband, and while there was recognized by this nephew as the wife whom he had deserted, and who, he had been led to believe, had drowned herself.

In the meantime Gordon Chumley had ascertained that Richard Knatchbull was an old convict—a man of very bad character—and had found that one of his ears had been cut off or injured, and when the Jew and Mrs. Knatchbull came to collect this money,

which the nephew was to have paid, he learned about the affair from the nephew, and met the man, and showed Richard Knatchbull that he knew his past history. He then made arrangements to meet them and obtain possession of the forged document at a more reasonable figure, at the concert hall. Old Tom had followed his daughter to the house where she was seeking employment and had heard the Jew and Richard Knatchbull making arrangements and talking over their affairs. He thus heard them making ar-
39 rangements to meet Gordon Chumley in this concert hall, and resolved to try to aid him. It was thus that these parties and he came to the concert hall at the same time that Gordon Chumley appeared there or shortly before. He pretended to be drunk when they drugged Gordon Chumley with the intention of putting him away, and started up denouncing the plot, and was then seized and put through the trap-door, as I have already described, and rescued him in the manner I have already described.

In the next scene the girl, Fannie Dalton, had been reunited to the husband who had deserted her, and in some unaccountable manner he was in possession of the money, although the money was left to him—I would say now that I may have heretofore spoken of this cousin of the nephew as getting the money.

The money was left to him on condition that he married this cousin, but he is now in possession of this money, and he is united to his own wife. Gordon Chumley is either married or about to be married to the cousin of the nephew. He has related to them his marvelous escape in the underground railway tunnel, and the Jew has been arrested.

Richard Knatchbull comes in about this time, and is arrested, and is identified by Old Tom as the man who had helped try to murder Gordon Chumley, who subsequently gives him his life, although he has tried to murder him, and Old Tom has at this time disclosed to his daughter his identity as her father.

Thus we have Gordon Chumley united to the girl whom he had loved all through the play; the young nephew was married and united to the wife whom he had deserted; we have Old Tom, Frank Dalton, united to his daughter. This finishes the story of the play, as I remember it.

X Q. 68. Have you given us the story of the play in the order as it is developed in the play?

A. No.

40 X Q. 69. You have given us your recollection of the story of the play?

A. Yes.

X Q. 70. As you remember it?

A. Yes.

X Q. 71. Your recollection is entirely based upon the Philadelphia performance of May, 1889?

A. Entirely based on that recollection as brought back to my mind by the performance which I have last witnessed.

X Q. 72. Then it is a recollection of both performances, substantially?

A. No, a recollection of the first performance.

X Q. 73. But you would not have remembered the first performance as clearly as you have testified to if it had not been assisted by the performance at the Grand-Opera House?

A. That is true.

X Q. 74. And also assisted by your affidavit which you made upon the motion for the injunction in this action?

A. That is true; I might say that I read the affidavit before I witnessed the last performance. The last performance was sufficient to bring the other before my mind as well without the affidavit as with it.

X Q. 75. But you did read the affidavit before you came over here today?

A. What do you mean by that? I did not read it today.

X Q. 76. When before today did you read it?

A. I read it last Thursday.

X Q. 77. Now, you spoke of a miniature locomotive crossing the stage—it is a miniature locomotive, is it?

A. Well——

X Q. 78. Describe it?

A. It seemed to be as good a stage locomotive as you could expect.

Motion made to strike out this answer.

41 X Q. 79. Describe the locomotive and cars—I don't want your judgment of it?

A. I don't know that I am capable of describing the locomotive.

X Q. 80. Is it not a profile miniature locomotive?

A. I cannot say.

X Q. 81. And the same about the cars?

A. I cannot say.

X Q. 82. You say you heard a whistle before the train appeared upon the stage—are you sure about that?

A. In Philadelphia.

X Q. 83. Sure about that?

A. I did.

X Q. 84. That is before the train appears upon the stage to the sight of the audience, the audience hears a whistle?

A. I will not say that; I am sure I heard a whistle some time during the act, but I won't say a whistle then. There was some noise by which it was intended to convey to the audience that the train was approaching.

X Q. 85. Was that noise the sound of a whistle or supposed to be a whistle?

A. I think it was—I am not positive.

X Q. 86. Was it the ringing of a bell or supposed to be the ringing of a bell?

A. I said I thought that sound was a whistle or supposed to be a whistle, I am not sure; further than that I cannot say anything about it.

X Q. 87. Mr. Swain, in your affidavit sworn to May 18, 1889,

used upon the motion to continue the injunction and to which affidavit you have referred you say describing the scene preceding the scene in which the locomotive appears, as follows: He, meaning Old Tom, finds an iron bar which he endeavors to wrench from its fastenings; meanwhile he is in an excited manner, saying he must
42 save his old friend; he finally says his strength fails him when the whistle of the engine is heard. Is that your present recollection?

A. It is.

X Q. 88. In the scene preceding the appearance of the locomotive the sound of the whistle is heard?

A. I have already stated it was.

X Q. 89. You are positive of it?

A. I have already said I was not positive of it.

X Q. 90. You say that a character is suspended about one foot from the stage?

A. That is my recollection.

X Q. 91. Is it not at least three feet?

A. No, I should say not.

X Q. 92. Is it not at least two feet?

A. I am not so sure of that; it was my impression it was about a foot; it might have been two feet.

X Q. 93. And it may have been three?

A. I don't think more than two feet.

Redirect examination:

R. D. Q. 94. Before going to Philadelphia and seeing this performance of "After Dark," had you read the railroad scene in "Under the Gaslight?"

A. I had.

R. D. Q. 95. Had you read the decision of Judge Blatchford in the case of Daly against Palmer, recorded 36 Howard's Practice Reports, page 206.

Objected to as immaterial and incompetent.

A. I had.

HAROLD SWAIN.

Subscribed and sworn to before me, this 29th day of January, 1890.

SAMUEL A. BLATCHFORD, *Examiner.*

Hearing adjourned to December 30th, 1889, at 10 a. m.

43 NEW YORK, *December 30th*, 1889—11 a. m.

Hearing adjourned by consent to January 8th, 1890, at 11 a. m.

JANUARY 8TH, 1890—11 a. m.

Present: Counsel as before.

Cross-examination of Mr. DALY by Mr. GERBER:

X Q. 55. When did you commence writing the play in question?

A. I think about a year before it was produced.

X Q. 57. And that would be when?

A. '66, in the year '66.

X Q. 58. Can you tell me about the month?

A. I could not.

X Q. 59. Prior to writing this play, what other plays had you written?

A. I had adapted them—for Miss Bateman, "Leah, the Forsaken." For Mrs. Wood a piece called "Taming a Butterfly"—and two or three other plays.

X Q. 60. All adaptations?

A. Previously I had written plays which were not produced—original plays.

X Q. 61. Can you mention any?

A. A piece written for Burton, the comedian; for Joseph Jefferson and for Mrs. Wood.

X Q. 62. Mention the titles?

A. I have forgotten; they are dead, buried and destroyed. They were not produced—not accepted.

X Q. 63. And the only plays that you had written prior to the one in question were adaptations?

A. One of a dramatization of a novel called Griffith Gaunt.

X Q. 64. But they were either dramatizations or adaptations.

44 A. Very few plays are otherwise.

Motion made to strike out the answer as not responsive.

— Q. 65. You mean to be understood as saying that very few plays are other than dramatizations or adaptations from some published work?

A. I do. At the present day very few plays that hold the stage are other than adaptations, from Shakespeare down.

X Q. 66. Can you tell me about when you incorporated in your play this railroad scene?

A. I should think in the spring of '67, the spring before it was produced.

X Q. 67. Could you not give me nearer the month?

A. I could not.

X Q. 68. And your play was completed when in '67?

A. In '67, the spring or early summer of '67.

X Q. 69. It was completed?

A. Yes. It was earlier; it was completed in the early winter of '67, in January or February of '67; it was read.

X Q. 70. That will do. Is this merely an impression, or are you clear about that?

A. I am very clear. I read the completed play to two gentlemen

who were managers of the theatre where the piece was afterwards produced, but were no longer the managers when the Worrell sisters came into occupation. I had prepared for them the play called Griffith Gaunt, which was produced, and following that play I suggested this one to them, and read portions of it. We consulted on the railroad scene, and models were made in the winter, I should think, of '66 and '67; whether it was January or February, it was the winter of that year.

X Q. 71. Who were these gentlemen?

A. Smith and Baker were the names.

X Q. 72. Where is Mr. Smith now?

45 A. Both are dead.

X Q. 73. Did they assist you in suggesting this scheme?

A. No.

X Q. 74. It had been completed then?

A. Yes. No one assisted me in completing this scene. I am very positive on that point.

X Q. 75. Was the scene as you then read it to them precisely as it appears in the exhibit?

A. In the play book.

X Q. 76. That is the one referred to.

A. Yes.

X Q. 77. You said in your bill that you deposited the title of the play on the first of May, 1867. Is not that a mistake?

A. I don't think it is. I don't remember. I am very positive of the answer I have just given you, because it is associated with the fact stated; but as to the date of the deposit of the copyright, I could not be positive as to the date. The certificate will give the date.

X Q. 78. But if the certificate differs from this date, do you believe the date of the certificate is correct?

A. I was not in the habit of depositing titles of plays before I wrote them.

X Q. 79. And you still insist that you deposited your title on the first day of May, 1867, as your present recollection?

A. If that is the date of the certificate, I don't know I have stated that I deposited it on the 1st of May, 1867.

X Q. 80. That is the allegation in the bill.

A. I have no recollection of the date I deposited the copyright.

Counsel for complainant admits that the allegation in the bill that the title was filed on the 1st of May, 1867, is an error, and was intended for the 1st day of August, 1867.

46 X Q. 81. Did you ever see the play "After Dark" as performed by the defendants in the National theatre in Philadelphia?

A. I didn't see it myself.

X Q. 82. Did you personally see a performance of the play "After Dark" at Miner's theatre in this city?

A. No.

X Q. 83. Did you personally see the play "After Dark" performed anywhere by the defendants Webster & Brady?

A. No.

X Q. 84. Then when you assert in your bill, commencing at folio 22, that the defendants George P. Webster and William A. Brady, with full knowledge of your rights, have been producing in various cities in the United States the play "After Dark," using and producing the railroad scene you claim, and several scenes and incidents in your play, varying them slightly, but following the plan of your play, you testify to matters you personally know nothing about. Is that not so?

A. That is so.

X Q. 85. So when you state in your bill that the scene in the play "After Dark," as produced by the defendants, is a palpable imitation of your railroad scene and plagiarized therefrom you testify to facts that you personally know nothing about?

A. The information was most direct and positive.

X Q. 86. I have limited my question—you personally know nothing about it?

A. I have not seen the play produced by them, but I have heard about it.

Counsel for defendants ask that the witness be instructed to limit his answers to the questions asked him.

The examiner instructs the witness to answer the question as directly as possible.

47 X Q. 87. Question repeated.

A. I do not.

X Q. 88. What do you mean by your last answer, when you say that you personally know?

A. I didn't see the play produced; I heard absolutely a description of this railroad scene, incident by incident, and therefore I commenced my suit.

X Q. 89. When was the play first produced by you?

A. In August, 1867.

X Q. 90. Where?

A. At the theatre opposite the New York hotel, then called the Worrell Sisters New York theatre.

X Q. 91. Who constructed the mechanical device of that scene for you?

A. The mere joining together was made from instructions given by myself and the managers at that time, by a man named Denham.

X Q. 92. What is his first name?

A. I don't know—he was not the inventor of the contrivance—he did patent it.

X Q. 93 Do you know about the year?

A. I do not.

X Q. 94. What do you claim as your invention or origination in the play in question so far as relates to the railroad scene—of course the other scenes are not in question?

Objection as immaterial and irrelevant.

A. I claim the combination of circumstances by which a person or any individual is placed on a railroad track so as to be in peril of his life from any approaching train, and is rescued from his position by another person just in time to be saved from the train which passes across the stage.

X Q. 95. Then the mere incident of the train passing the stage disconnected from the other incidents is not claimed by you as original?

48 A. No, and never was claimed so.

X Q. 96. Nor do you claim as your original invention or first idea, the fact of one character in the play being rescued by another while in peril of his life?

A. Certainly not, it is the combination of circumstances I claim as original.

X Q. 97. Nor do you claim as original as I understand you, the incident of a character being placed upon a railroad track and a train of cars passing over him—I am disconnecting it from the rescue?

A. Previous to my composition of "Under the Gaslight" no person had been placed in peril of his life on a railroad track, and I claim the person in such peril of his life in a drama is original with me.

X Q. 98. Whether the character be rescued or not while in such peril?

A. I have not copyrighted any such thing—I copyrighted the combination of circumstances.

X Q. 99. Then you do not claim as your origination the incident of a character being placed upon a railroad track and in danger of his life by reason of an approaching train?

A. As original with me, yes, sir.

X Q. 100. And this independently of the question whether the character be rescued or not?

A. In all details I claim as original a person placed on a track and in peril of his life, as original with me in a drama or any production for stage uses.

X Q. 101. But you don't wish to be understood as testifying that prior to the time you wrote this play this incident did not appear in any printed publication, do you?

A. To my knowledge, never.

X Q. 102. Then you wish to be understood as testifying that prior to the copyright in question, August, 1867, there had never——

A. My invention of the incident I have said to have been
49 as early as January, 1867; though produced in August, my play was invented in January, 1867.

Motion made to strike out the answer as not responsive to any question which has been asked the witness.

X Q. 103. Do you wish to be understood as testifying that prior to the alleged copyright in question, there had never appeared in

any print or publication whatever of any kind, the incident of one character in peril of his life by an approaching train being rescued by another?

A. I do, sir.

X Q. 104. And do you wish to be understood as stating that prior to the copyright in question there had never appeared in any print or publication of any kind the incident of one character being placed in peril of his life by being fastened to a railroad track shortly prior to the approach of a passing train?

A. I claim so.

X Q. 105. So, that this incident or idea was strictly original with you, and had never appeared so far as you know, in any printed story or publication of any kind?

A. In any shape or form whatever.

X Q. 106. Prior to the time you wrote this play in question, had not your attention been called to a story entitled "Captain Tom's Fright"?

A. I never heard of such a story.

X Q. 107. Prior to that time had not your attention been called to a play called "The Engineer"?

A. I never heard of such a play.

X Q. 108. Prior to that time had not your attention been called to a play entitled "George Stephenson"?

A. I never heard of such a play.

X Q. 109. Prior to that time had not your attention been called to a play entitled "The London Arab"?

50 A. I never heard of such a play.

X Q. 110. Then, if — any of these plays or publications there appeared a scene of a railroad with the incident of one of the characters being fastened to a track for the purpose and with the design that he should be killed by the passing train, you would not still claim that the idea was original with you?

A. I would, sir, I never read of the incident anywhere; I never heard of the incident anywhere, and I never saw it except in my mind as it came to me as an inspiration, it was never discussed in any way.

X Q. 111. You know of a play "On Hand," you have heard of it?

A. Yes.

X Q. 112. You know of the incident in that play of one of the characters in danger of his life by a passing train?

A. No, I never saw the play, never read it, and don't know anything what the play is about.

X Q. 113. Did not you commence or authorize an action to be commenced against Mr. Thompson to enjoin the performance of the railroad scene in the play "On Hand"?

A. I cannot recollect at present; I have commenced many suits for the suppression of my railroad scene from 1867 to the present time, but do not remember that particular one.

X Q. 114. Don't you remember that you tried to enjoin in that action the performance by Mr. Thompson and others of the scene

where one of the characters is in danger of his life by a passing train, in which action you failed?

A. I don't recollect having failed in any action except this one in a preliminary injunction.

X Q. 115. Preliminary or permanent?

A. I don't recollect it.

X Q. 116. The incident of the railroad you would claim as an infringement of your rights whether the train be supposed to run upon the surface, underground or elevated?

51

Objection as immaterial and irrelevant.

Counsel for the defendants asserts, that he is cross-examining the inventor, and has an absolute right to ascertain what his claim is.

A. If the persons are not in peril of their life on that railroad, whether it is surface, underground or elevated, I don't claim it.

X Q. 117. And would you claim it where the person in peril of his life is not placed across the track and is in peril because of being placed in a position where he may be struck by the passing train?

A. If he is in peril of his life by that coming train, I would claim that it is an infringement of my right.

X Q. 118. Have you seen a play entitled "Pavements of Paris"?

A. I have not.

X Q. 199. Do you know of a railroad scene in that play—ever seen it or heard of it or read it?

A. I have not.

X Q. 120. Do you know the railroad scene in the play called "Waifs of New York"?

A. I do not; I don't know of the play.

X Q. 121. Do you know of a publication entitled "Scamps of London"?

A. Yes.

X Q. 122. You commenced an action against Jarrett and Palmer in 1868, did you not, to enjoin the railroad scene?

A. I think that is the date.

X Q. 123. That is the date. And do you know whether at that time the defendant produced the publication entitled "Scamps of London"?

52

A. I think they did.

X Q. 124. That play "Scamps of London" from 1867, has been published to the present time, that you know?

A. It has been published in England.

X Q. 125. In England and in this country?

A. Imported to this country.

X Q. 126. In which publication since 1868, do you find any difference between the railroad scene set forth therein in scene 3d, act 3d from the railroad scene claimed by you?

A. I didn't know the play before—I didn't know there were two or that the books differed at all from this; I have never read this play—I cannot give an answer as to whether there is any difference between two publications of the same play.

X Q. 127. That scene as published there and your scene as claimed?

A. I claim this is a direct imitation of my scene. This book published——

X Q. 128. I don't ask that question. I limit my question to after 1867. Do you claim that from 1867, the publication of the "Scamps of London" had a scene which you assert is an imitation of the scene you invented?

A. I do, sir.

X Q. 129. The authorized publishers of your play were Samuel French & Sons?

A. No.

X Q. 130. Were they not authorized to publish your books?

A. The person authorized to publish my book was a man named Womyss, who sold his plates to French.

X Q. 131. And when they purchased those plates they continued the publishing?

A. They have continued without interference from me.

X Q. 132. Since when was that?

A. I could not tell when the transfer was made.

53 X Q. 133. About how many years ago?

A. I could not say.

X Q. 134. Over ten?

A. Over ten.

X Q. 135. Over fifteen?

A. I won't say more than over ten. I cannot tell.

X Q. 136. When last did you personally perform the play in suit?

A. When was it performed under my license, or directly performed by me?

X Q. 137. Directly performed by you?

A. I think the last time was in—some time in the season of 1874 and 1875, at the Grand Opera House.

X Q. 138. At the time Jarrett and Palmer undertook to perform "After Dark," you had been or were performing "Under the Gaslight" in this city?

A. I think so.

X Q. 139. Since 1874, you have licensed the use of this scene to various parties, have you not?

A. Yes.

X Q. 140. And the only source of income to you from this play since 1884, has been by reason of the license fees which you received?

A. Yes.

X Q. 141. And you would receive I presume a larger license fee from persons performing the whole play "Under the Gaslight" than from those producing the single scene?

A. Yes.

X Q. 142. And would it be invariably a uniform sum?

A. It has varied according to the length of contract to be produced or the territory to be used.

X Q. 143. You said in answer to question 27 on your direct examination that it has been a chief source of profit to you for many years, your answer does not refer to recent years, does it?

A. From the beginning.

54 X Q. 144. A chief source originally.

A. Yes, sir; and is now.

X Q. 145. Of course it is not as valuable today as when it was originally produced?

A. In answer to that question, I say I have received within one month four propositions for contracts for the production of the play.

X Q. 146. You never enjoined the publication of the "Scamps of London"—no litigation concerning that play?

A. No, sir.

X Q. 147. There was no litigation of any kind between you and the parties publishing that play "The Scamps of London"?

A. No, sir.

X Q. 148. Have you within the past year received any royalties for the right to perform the scene in question?

A. I don't think within the last year—within the last three years I think I have.

X Q. 149. For the scene alone, disconnected with the play?

A. The scene in "After Dark."

X Q. 150. You have received it from a party named Hadley, and an action is now pending against you?

A. I don't know of any such action. There was one in California which was squelched.

X Q. 151. Then, Mr. Daly, as I understand your claim, the incident of a man tied to a railroad track with the intent that he should be killed by an approaching train would be an infringement upon your rights?

Objected to as immaterial and irrelevant.

A. Yes.

X Q. 152. And you would also claim that a scene or incident of a person tied to a railroad track in order that he might be

55 run over and killed by an approaching train, and as the train approaches being side-tracked and the man thereby saved, would be a violation of your rights and an infringement.

A. It would be a violation and infringement.

X Q. 153. And that incident has never appeared in any publication?

A. Not previous to mine; no.

X Q. 154. I don't understand, Mr. Daly, that you received any royalties within the past two years for the right to perform the railroad scene as claimed by you?

A. I cannot recollect exactly the year—yet in what I should call recently—within three years.

Further examination of Mr. Daly suspended.

GEORGE B. HEATH, called by the complainant, and being duly sworn, testifies as follows:

Direct examination by Mr. RIVES:

Q. 1. What is your business?

A. Lawyer and clerk in the office of complainant's solicitors.

Q. 2. Was that your business in the month of May last?

A. Yes.

Q. 3. In the month of May, last, did you see the performance of a play called "After Dark"?

A. Yes.

Q. 4. Where?

A. In the People's theatre in the Bowery, New York city.

Q. 5. Did you get a programme of that performance?

A. Yes.

56 Q. 6. Look at the paper now shown you, marked "Complainant's Exhibit Programme of May, 1889," and say if you have ever seen that before?

Objected to as incompetent, irrelevant and immaterial; that it purports to be after the filing of the bill in this suit, and after the argument of motion for injunction and not one of the infringements charged in the bill.

A. Yes, sir.

Q. 7. Where did you first see it?

Objected to on the same grounds as the objection to the question immediately preceding.

A. I first saw it when I took it from a stand in the People's theatre the night of the 20th of May.

Q. 8. Where did you sit in the theatre on that occasion?

Objection upon the same grounds as to the question before.

A. In the orchestra about five rows back from the front of the stage.

Q. 9. Do you remember any part of the play in which the scene is in an underground railroad tunnel?

A. Yes, sir; I noticed that particularly.

Q. 10. Please state what was the action upon the stage in that scene and what went just before it.

Objection upon the same grounds as objections to question 6.

A. The first part of that act, I believe was the concert-hall scene, and one of the characters called Gordon Chumley comes to this concert hall in accordance with an appointment, and while
57 he is there a character called Old Tom staggers in looking as if intoxicated and sits on a chair, and they go on with a scheme which is on hand. Old Tom starts up and denounces the plot and is seized and put through a trap-door which is in front and a little towards the left of the stage. Immediately thereafter Gordon Chumley is seized and taken to the same trap-door as if to

put him through, but before they can do that the curtain is dropped. The scene changes to a dark cellar and Old Tom is seen going back and forth in an excited manner, going to the left of the stage and putting his ear to the wall says he hears voices—Dicey Morris and some one else and they are going to kill Gordon Chumley—he goes round in an excited manner saying he must save his friend. He goes to a sort of lattice window to the right of the stage, and a little higher that his head, and says that it is an underground railway tunnel. He then goes back and forth a little more and finally disappears at the right wing. The scene then quickly changes by the disappearance of this cellar and shows the back part and top of the underground railroad tunnel and the railroad tracks and Gordon Chumley is seen staggering from side to side between the rails as though intoxicated or drugged. Old Tom appears then at an opening at the back part of the wall and excitedly asks Chumley to take his hand and he will save him, and so on. Chumley does not appear to see him or does not notice him. During this time sounds which represent the rumbling and whistling of an engine are heard to the right wing, and as Chumley staggers to the back against the wall the train rushes past, but before it gets across the stage the curtain drops; it is about three-quarters past when the curtain goes down.

Q. 11. When you speak of right and left, do you refer to your own right and left or to the right and left of a person standing on the stage?

A. My own right and left.

Q. 12. Have you ever seen the play since the 20th of May?

58 A. Yes.

Q. 13. When?

A. The next evening.

Q. 14. The 21st of May?

A. Yes.

Q. 15. Where did you see it then?

A. At the same theatre.

Q. 16. Where did you sit that evening?

A. In the balcony.

Q. 17. Did you see any difference in the performance that night to the night before?

Objected to upon the ground specified to questions 6 and 10.

A. It was just the same except that I noticed that Gordon Chumley staggered against the lever which switched the train.

Q. 18. Can you say whether that incident did not occur the night before?

A. No, sir; I could not see so well, as I was more on a level with the stage.

Q. 19. You are not able to say whether in that respect there was any variation as matter of fact or not?

A. No.

Q. 20. You had not observed that incident on the first night, as I understand?

A. No

Cross-examination by Mr. GERBER:

X Q. 21. The fact is, is it not, that the train stops—does not go across the stage, and when about half way across the stage the curtain goes down.

A. It seems to keep going until the curtain is down—full half way across when the curtain goes down across the stage—when the curtain commenced to go down.

X Q. 22. Did you see it cross the stage—the entire train cross the stage?

A. Locomotive and tender.

59 X Q. 23. Right across the stage?

A. I saw it cross half way until the curtain came down—I could not say how much further it went.

X Q. —. Did you see the rear of the train?

A. Yes.

X Q. 25. What did the train consist of—locomotive and tender and how many cars?

A. That seemed to be all.

X Q. 26. No cars?

A. No, that is my best recollection.

X Q. 27. Was it a double track or simply a single track?

A. The first night I cannot remember. The second night it seemed to be a single track part of the way and then double—I could not swear positively.

X Q. 28. A sort of side track, was it, so that the train might be side-tracked?

A. Yes, I could not see the train changed its direction any, except that the track moved at the switch—it moved a little one way, I didn't notice any change of route.

X Q. 29. What moved?

A. When it moved, the lever, which pulled the track.

X Q. 30. By the lever you mean the switch?

A. Yes.

X Q. 31. And when they moved that switch, that moved the track so as to switch the train to the side track. Was it intended to represent that incident.

A. It was intended to represent that incident.

X Q. 32. What did you do with this programme "Complainant's Exhibit Programme of May 1889" after you received it?

A. I brought it to the office and marked it with red ink—two paragraphs in red ink.

X Q. 33. Where did you place it?

A. I put it with the papers I guess, in the case.

X Q. 34. Then it was not put in the safe?

A. Not at that time.

X Q. 35. And the papers in the case, I suppose are in open pigeonholes?

60 A. I put it with the bundle of papers in the case.

X Q. 36. And they were——

A. I don't know where they were placed after, I think they were in Mr. Olin's room.

X Q. 37. But the papers in the cases in your office are accessible to all the clerks in the office, are they not?

A. Yes.

X Q. 38. Did you ever relate to Mr. Daly what you saw there?

A. No.

X Q. 39. So that whatever information he has was not obtained from you?

A. No.

X Q. 40. Did you make any note or memorandum of what you saw?

A. Yes.

X Q. 41. Where?

A. Entered in the day book, kept by the firm, the next day kept by the office.

X Q. 42. You entered it?

A. Yes.

X Q. 43. When did you last look at that day book?

A. You mean that entry—about two weeks ago.

X Q. 44. And that was to refresh your recollection, was it?

A. Yes, to see if it was entered by myself.

X Q. 45. You looked at that entry because you expected to be called as a witness in this case?

A. Yes.

Redirect examination by Mr. RIVES:

R. D. Q. 46. Look at the paragraphs which I now show you marked in red ink, on "Complainant's Exhibit Programme of May 1889," which read, "Silver gambling hall and underground railroad tunnel, a miracle in natural realism" and also "The great gambling-house scene and railroad-tunnel sensation," and say whether
61 those are the red-ink marks which you say you placed on the programme when you brought it to the office.

A. Yes.

R. D. Q. 47. As I understand your statement you say that your recollection of the play "After Dark" as performed at the People's theatre is that the locomotive in the railroad scene had got half way across the stage when the curtain commenced to descend and it appeared to you to be moving still when the curtain got down.

Objected to as leading.

A. Yes.

Recross-examination by Mr. GERBER:

R. X Q. 48. How far beyond half way across the stage had the train according to your recollection gone when the curtain was down?

A. I could not say—according to my recollection—I should judge about three-quarters—I could not say exactly.

R. X Q. 49. It was moving very slowly after the curtain commenced to go down.

A. Yes.

R. X Q. 50. And was substantially at a stand-still when it was half way across?

A. It didn't go very fast when it started, it was not going very fast and it kept about the same, I judge, until the curtain got down. I didn't follow it. The last I saw it was moving and the curtain commenced to come down. I didn't follow it down.

R. X Q. 51. But after the curtain commenced to go down, there was no additional incident in that scene—no action?

A. Not that I recollect.

R. X Q. 52. In what act is that?

62 A. The end of the fourth act.

GEORGE B. HEATH.

Subscribed and sworn to before me this 29th day of January, 1890.

SAMUEL A. BLATCHFORD, *Examiner.*

Further hearing adjourned to Saturday, January 11th, at 11 a. m.

JANUARY 11TH, 1890.

Hearing adjourned to January 29th, 1890, at 11 a. m.

JANUARY 29TH—11 a. m.

Present: Counsel as before.

Cross-examination of Mr. Daly suspended.

AUGUST WACHS called by the complainant, and being duly sworn, testifies as follows:

Direct examination by Mr. RIVES:

Q. 1. What is your business?

A. Photographer. I am the operator in Mr. Ulrich's place, 156 Bowery.

Q. 2. How long have you been in that business?

A. Twenty years, always with him.

Q. 3. Look at "Complainant's Exhibit Photograph," and say if you have ever seen that before?

A. Yes.

Q. 4. Did you take that photograph?

A. Yes.

Q. 5. Where did you take it?

63 A. I took it on the northeast corner of Bowery and Grand street.

Q. 6. What did you take it from?

A. From a large bill post.

Q. 7. What was it posted on?

A. On a building, they were putting a saloon in the lower part, and it had the whole saloon fenced in, and this bill was posted on the Bowery side.

Q. 8. About when did you take it?

A. In May, I don't know the date, it was about May 20 to 27th.

X Q. 37. But the papers in the cases in your office are accessible to all the clerks in the office, are they not?

A. Yes.

X Q. 38. Did you ever relate to Mr. Daly what you saw there?

A. No.

X Q. 39. So that whatever information he has was not obtained from you?

A. No.

X Q. 40. Did you make any note or memorandum of what you saw?

A. Yes.

X Q. 41. Where?

A. Entered in the day book, kept by the firm, the next day kept by the office.

X Q. 42. You entered it?

A. Yes.

X Q. 43. When did you last look at that day book?

A. You mean that entry—about two weeks ago.

X Q. 44. And that was to refresh your recollection, was it?

A. Yes, to see if it was entered by myself.

X Q. 45. You looked at that entry because you expected to be called as a witness in this case?

A. Yes.

Redirect examination by Mr. RIVES:

R. D. Q. 46. Look at the paragraphs which I now show you marked in red ink, on "Complainant's Exhibit Programme of May 1889," which read, "Silver gambling hall and underground railroad tunnel, a miracle in natural realism" and also "The great gambling-house scene and railroad-tunnel sensation," and say whether
61 those are the red-ink marks which you say you placed on the programme when you brought it to the office.

A. Yes.

R. D. Q. 47. As I understand your statement you say that your recollection of the play "After Dark" as performed at the People's theatre is that the locomotive in the railroad scene had got half way across the stage when the curtain commenced to descend and it appeared to you to be moving still when the curtain got down.

Objected to as leading.

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SAMUEL A. BLATCHFORD, *Examiner.*

Further hearing adjourned to Saturday, January 11th, at 11 a. m.

JANUARY 11TH, 1890.

Hearing adjourned to January 29th, 1890, at 11 a. m.

JANUARY 29TH—11 a. m.

Present: Counsel as before.

Cross-examination of Mr. Daly suspended.

AUGUST WACHS called by the complainant, and being duly sworn, testifies as follows:

Direct examination by Mr. RIVES:

Q. 1. What is your business?

A. Photographer. I am the operator in Mr. Ulrich's place, 156 Bowery.

Q. 2. How long have you been in that business?

A. Twenty years, always with him.

Q. 3. Look at "Complainant's Exhibit Photograph," and say if you have ever seen that before?

A. Yes.

Q. 4. Did you take that photograph?

A. Yes.

Q. 5. Where did you take it?

63 A. I took it on the northeast corner of Bowery and Grand street.

Q. 6. What did you take it from?

A. From a large bill post.

Q. 7. What was it posted on?

A. On a building, they were putting a saloon in the lower part, and it had the whole saloon fenced in, and this bill was posted on the Bowery side.

Q. 8. About when did you take it?

A. In May, I don't know the date, it was about May 20 to 27th.

Q. 9. Which year?
A. Last year, 1889.
Q. 10. What sort of camera did you use?
A. Eight to ten instrument, we call it.
Q. 11. How far off from the bill were you when you took it?
A. About fourteen feet, I might be.
X Q. 12. Do you remember the colors in which the bill was printed?
A. Colors consisting of yellow, green, red, the principal colors, I could not say what other colors there were, but yellow and green and red there were because I could not get a decent photograph, these colors took dark.
Q. 13. Does the fact that the bill was printed in these colors interfere with the outline of the bill?
A. No.

Cross-examination by Mr. GERBER:

X Q. 14. Do you know by whom Mr. Ulrich was employed?
A. To take the photograph?
X Q. 15. Yes.
A. I forget who it was.
X Q. 16. That is, as I understand you, you were not employed to take the photograph, but were an employee of Mr. Ulrich?
A. Yes, I operate, Mr. Ulrich is the proprietor, and I managed this.
64 X Q. 17. You don't know by whom Mr. Ulrich was employed?
A. No, I probably could find it in the books, it is entered most likely.
X Q. 18. You fix the date between May 20th and 27th?
A. Yes.
X Q. 19. What is it that fixes that date in your mind?
A. I know it was in May, and it said on that sign May 20th.
X Q. 20. It is entirely because the sign said May 20th, that leads you to suppose it was between the 20th and 27th of May, is it not?
A. I know it was in May, I don't know exactly the date, I saw it that week.
X Q. 21. When you had finished it to whom was it delivered?
A. The party who engaged us to do it.
X Q. 22. And that party was?
A. That party's name was probably written in our books.

AUGUST WACHS.

Subscribed and sworn to before me, this 20th day of February, 1890.

SAMUEL A. BLATCHFORD, *Examiner.*

Cross-examination of Mr. DALY by Mr. GERBER continued:

X Q. 155. You say, in answer to cross-question 59, that prior to writing this play "Under the Gaslight," a romantic panorama of

the streets and homes of New York, you had adapted two plays, to wit, "Leah the Forsaken," and another called "Taming a Butterfly." And, in answer to cross-questions 64 and 65, you
65 say that you wish to be understood as saying, "that very few plays that hold the stage at the present day are other than adaptations, from Shakespeare down;" now, from what play, story or work was the play in question adapted or dramatized?

A. Which play, you mentioned two?

X Q. 156. "Under the Gaslight, a romantic panorama of the streets and homes of New York"?

A. That is one of the few plays not adapted or dramatized.

X Q. 157. The whole of which was original with you?

A. It was.

X Q. 158. Had you ever, prior to its writing, read the French play "Les Bohemiens"?

A. I had not.

X Q. 159. Had you ever read, prior to writing that play, a translation of "Les Bohemiens"?

A. I had not.

X Q. 160. You know, do you not, that "Les Bohemiens," the French play, was written and published before your play?

A. I know it now, I didn't at that time. I knew nothing about it until I commenced my suit against Jarrett and Palmer and they put it in their evidence.

X Q. 161. Then the first you say you heard of "Les Bohemiens" or its translation or adaptation "The Scamps of London," was when Jarrett and Palmer, in 1868, produced it in opposition to your motion for injunction.

A. That was the first I heard.

X Q. 162. And if there are incidents, characters or language in that play similar to the French play "Les Bohemiens" (I except from my question the railroad scene now), you would say that the similarity is simply accidental?

A. If there is any such similarity it is accidental.

66 X Q. 163. I see, in answer to cross-question 124, that the "Scamps of London" has been published in London from 1867 to the present time, and, in answer to cross-question 125, that it has been imported to this country, do you not also know that it has been published in this country?

A. I don't know it.

X Q. 164. Do you not know it has been published in this country by Samuel French & Son?

A. I do not; I didn't think it of any consequence to look up the publication or interfere with the importation; I considered my copyright protected me in the performance or production on the stage. There was no profit to me in the printing or sale of the play.

X Q. 165. Was that a play which had been published in England and imported and circulated in this country?

A. Yes, but not before printed here; I never knew it was re-

printed here; it was printed in England, but I never knew of an American publication.

X Q. 166. It was printed by whom in this country?

A. I don't know; I suppose French; he had the right and permission to print "Under the Gaslight," I didn't care about any other.

X Q. 167. Have Samuel French & Son paid you any royalty or compensation for publishing that play "Under the Gaslight, a romantic panorama of the homes and streets of New York"?

A. I have not a very distinct recollection, but a faint one that there was a settlement several years ago, made for some copies sold, I could not recall it.

X Q. 168. About how many years ago?

A. Ten or fifteen, not more.

X Q. 169. And from that period have they not paid you any compensation or royalty?

A. The amount was so small, I didn't call for it, I suppose they would pay it if I sent in a claim.

67 X Q. 170. You never sent in a claim.

A. No.

X Q. 171. And you say in answer to cross-question 131 they have continued to publish your book without interference from you, that is so?

A. They have.

X Q. 172. And they are publishing and selling the book now?

A. I don't know.

X Q. 173. Look at the exhibit annexed to your bill of complaint and say whether that is not a publication by Samuel French & Sons?

A. They may have a book printed ten or fifteen years ago, that does not refer to now.

X Q. 174. My question was whether they are selling the play now?

A. I could not tell you.

X Q. 175. Where did you get the Exhibit "B" which is a printed copy of your play?

A. That was procured by my attorneys.

X Q. 176. You didn't give it to them?

A. No, not to my recollection.

X Q. 177. But that exhibit contains the names of Samuel French & Sons as publishers, does it not?

A. Yes, I think I said that Mr. Wemyss had the transfer made; I gave permission to Wemyss and allowed him to transfer it.

X Q. 178. You didn't give Samuel French & Sons permission?

A. Samuel French & Sons purchased from Wemyss, he was a young man I wanted to help along.

X Q. 179. Was the permission given to Wemyss for a limited time?

A. No, I never considered the publication of special value—it gave me no profit, I did not consider it interfered with my rights at

all, and I did not concern myself about it at all. I mean my rights of representation.

X Q. 180. Was the permission you gave to Wemyss just for your pleasure.

68 A. No.

X Q. 181. It could be terminated at pleasure?

A. Yes.

X Q. 182. A personal matter?

A. Yes, he was a doorkeeper at the theatre and had a little book store.

X Q. 183. There was no writing between you?

A. No.

X Q. 184. Just a personal request and permission.

A. Yes.

X Q. 185. Since the last session Mr. Daly, have you been able to recall, the names of the plays which you say in answer to cross-question 59 that you wrote in addition to the adaptation of "Leah the Forsaken" and "Taming a Butterfly"?

A. I have not given it any thought.

AUGUSTIN DALY.

Subscribed and sworn to before me, this 26th day of February, 1890.

SAMUEL A. BLATCHFORD, *Examiner.*

JOHN C. CLARK, called by the complainant and being duly sworn, testifies as follows:

Direct examination by Mr. RIVES:

Q. 1. What is your business?

A. Lawyer.

Q. 2. Where is your office?

A. 32 Nassau street.

Q. —. You are managing clerk for Olin, Rives and Montgomery?

A. I am.

Q. 4. You were in Washington about the 1st of January?

69 A. I was.

Q. 5. When there did you have an interview with Mr. Spofford, the Librarian of Congress?

A. I did on the 2d of January.

Q. 6. Look at "Complainant's Exhibit Certificate of Deposit, Librarian of Congress," and say what the conversation, if any, you had with Mr. Spofford, on the subject of that certificate, was.

Objected to as incompetent, immaterial and irrelevant; that the defendants cannot be bound by any conversation between this witness and a third party to which he was not present, and that the primary evidence in any event, would be that of the Librarian who might be cross-examined.

A. I showed the Librarian a copy of this exhibit, and asked him to certify for me the copy of the play, which I have in my hand

now and had then, and he refused, saying that under instructions of a committee of Congress, under which he acted, he did not certify copies of books deposited in his library, and only certified copies of records there. I asked him if he would put that in writing which he did and I have from him a letter addressed to Olin, Rives and Montgomery.

Q. 7. Is the paper I now show you the paper you refer to from Mr. Spofford?

A. It is.

Q. 8. Did you see him sign it?

A. I did.

Counsel for the complainant offers this letter in evidence which is marked "Complainant's Exhibit Letter from Librarian of Congress, S. A. B., examiner."

Objected to as incompetent, immaterial and irrelevant, not
70 a certificate by an officer of any paper of record in his possession, and caused to be the declaration of the person to Messrs. Olin, Rives and Montgomery.

Q. 9. Did you have any further conversation with Mr. Spofford?

A. I had.

Q. 10. Where was it?

Objected to upon same grounds as the objection to question —.

A. I asked him for permission to examine a copy of the book mentioned in this certificate, "Complainant's Exhibit Certificate of Deposit, Librarian of Congress." I asked him for a copy, for permission to examine the copy, and he got the book for me and gave it to me.

Q. 11. You had the book with you at the time?

A. Yes, at the time.

Q. 12. And you have that same book with you now?

A. I have.

Q. 13. Did you compare the book you had with you with the book Mr. Spofford gave you?

A. I did, fully and carefully.

Q. 14. What difference, if any did you find between the two books?

Objected to as incompetent, immaterial and irrelevant.

A. I found no difference in any respect. They had put covers on this same book as they always do in the Library of Congress, I suppose.

Q. 15. Did the copy in the Library of Congress have the title page as the book I have in my hand?

A. Yes.

Q. 16. Is the book I now show you the book you took to the Library of Congress?

71 A. It is.

Counsel for the complainant offers in evidence the book entitled "Under the Gaslight, a totally original and picturesque drama of

life and love in these times." In five acts, by Augustin Daly, author of "Leah, the Forsaken," "Griffith Gaunt," "Taming a Butterfly," etc., etc. As originally played at the New York theatre in the months of August, September and October, 1867. New York: Printed for the author. 1867.

Objected to as incompetent, immaterial and irrelevant and not shown to be a correct copy. The book is marked "Complainant's Exhibit Book, Library of Congress."

Cross-examination by Mr. GERBER:

X Q. 17. Mr. Clark, you are now in the employ of Olin, Rives & Montgomery, are you not?

A. I am.

X Q. 18. And you went to Washington at their request?

A. I went there, and while there did this at their request.

X Q. 19. In whose handwriting is the body of the "Complainant's Exhibit Letter from the Librarian of Congress"?

A. My own.

X Q. 20. Then it was not sent to Olin, Rives & Montgomery, but was prepared by you for signature by the Librarian?

A. I object to answering that question in that form. What do you mean by prepared? I put it in his own language as nearly as possible and he signed it. He told me almost identically those words as near as I remember.

72 X Q. 21. The body of the letter was prepared by you?

A. Explain what you mean by prepared; it was written by me.

X Q. 22. And composed by you?

A. As nearly as I recollect (at this time), the body of that letter was in the language used to me by Mr. Spofford.

X Q. 23. Did Mr. Spofford say to you in response to your request that I certify for you a copy of the drama, "Under the Gaslight," by Augustin Daly?

A. I cannot say he did use those words exactly.

X Q. 24. Those words were original with you?

A. I cannot say that.

X Q. 25. They were composed by you, were they not, in preparing this exhibit?

A. I think that letter is very nearly in the words that Mr. Spofford used to me, except the words "as you request," at the beginning—the opening sentences. He said, I am not able, &c.

X Q. 26. And he refused, did he, to certify to "Complainant's Exhibit Book, Library of Congress," because it was not a record of his office?

A. He refused to certify this Exhibit Book, Library of Congress, because under the direction of some committee of Congress he never certified to anything but the records of Congress.

Motion made to strike out this answer as not being responsive, and counsel calls the attention of the court to the fact that the witness is evidently evading an answer to the question.

X Q. 27. And he refused, did he, to certify to "Complainant's Exhibit Book, Library of Congress," because it was not a record of his office?

Complainant's counsel instructs the witness not to answer.

73 A. As nearly as I can recall it, Mr. Spofford said, I cannot certify that copy of the book because a committee—I don't remember what committee—of Congress who has charge of these matters has directed me not to certify copies of anything but records in my possession.

X Q. 28. How did you make the comparison between "Complainant's Exhibit Book, Library of Congress," and the book you say you compared?

A. By having another person read aloud to me the copy on file with the Librarian of Congress, and at the same time following it myself with this "Exhibit Book, Library of Congress," and also when I noticed in this book, or the person reading noticed, any typographical errors or misspelling, as I think there were one or two cases, noting it and making the comparison in that particular place myself, and looking at each page as we went along to see that the general appearance of each page conformed and the paging conformed in the two copies.

X Q. 29. Who was the party who read the book which you assert was on file?

A. A sister of mine.

X Q. 30. And you held in your hand "Complainant's Exhibit Book, Library of Congress"?

A. I did.

X Q. 31. She did the reading?

A. She did the reading.

X Q. 32. Were there any changes which were made in this at all—any errors which you found?

A. There was no difference at all in the two copies.

X Q. 33. You compared, you say, the first page of this book?

A. I did.

X Q. 34. Did you compare also the words inside as fol-
74 lows: "Entered according to act of Congress, in the year 1867, by Augustin Daly, in the clerk's office of the district court of the United States for the southern district of New York"?

A. I compared every word in the book.

X Q. 35. And they were the same?

A. Every word in this book was in the one on file.

X Q. 36. Do you know the date when the book on file was deposited with the Librarian of Congress?

A. I don't remember now; it is told in the exhibit.

X Q. 37. 26th of September?

A. That is the exhibit I showed the Librarian of Congress when I asked him for the book.

X Q. 38. Where did you get "Complainant's Exhibit Book, Library of Congress"?

A. From Olin, Rives and Montgomery.

X Q. 39. You took it with you to Washington?

A. Yes.

X Q. 40. How do you know the exhibit now produced is the same book?

A. Because it has been in my possession—either in my possession actually or among my papers since.

X Q. 41. In the safe?

A. Yes, in the safe.

X Q. 42. Under lock and key?

A. No, not any more that the safe is in the daytime.

X Q. 43. Accessible at times to clerks in the office?

A. Yes, under seal in the safe.

X Q. 44. How long was it in the safe?

A. From January 3d, I think, the day I returned until this morning, except as I have had it out once or twice myself with the expectation of coming here.

X Q. 45. And the seal was broken when?

A. It was opened when I had it out one of these times and resealed.

75 X Q. 46. By you?

A. Yes.

X Q. 47. When was it broken last?

A. Yesterday, I think.

X Q. 48. By you?

A. By me, by sealing I mean it was mucilaged together.

X Q. 49. Enclosed in an envelope?

A. A paper wrapper and sealed with mucilage.

X Q. 50. Any mark on it?

A. My own name.

X Q. 51. It was broken last yesterday?

A. I think so.

X Q. 52. Morning?

A. Afternoon, I think.

X Q. 53. And placed back in the safe?

A. Yes, without sealing.

X Q. 54. From that time it was accessible to any clerk in the office?

A. The papers were folded up and not sealed.

X Q. 55. But was it under lock and key since yesterday afternoon?

A. Not all the time.

X Q. 56. And accessible at that time to any of the clerks?

A. Any clerk knowing the combination, since last night, when I put it in the safe, and at any time the safe was open.

X Q. 57. It has been open at various times since yesterday?

A. I put it in late in the afternoon. I took it out just before coming here, the safe was open maybe three hours.

JOHN C. CLARK.

Subscribed and sworn to before me, this 26th day of February, 1890.

SAMUEL A. BLATCHFORD, *Examiner.*

Complainant rests.

Further hearing adjourned.

76 Circuit Court of the United States, Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

To the circuit court of the United States for the southern district of New York:

I, Samuel A. Blatchford, one of the standing examiners of this court, do hereby certify, that pursuant to the notice to take testimony hereto annexed and marked "Complainant's Exhibit No. 2, of December 23d, 1889," the testimony of the complainant in the above-entitled action was taken before me as one of the standing examiners of this court, at my office, No. 16 Exchange place, in the city of New York, on the following days, viz: December 23d, 1889, January 8th, 1890, and January 29th, 1890; and that on each of the following days for which the examination was set down, an adjournment was taken by consent of counsel for both parties, viz: December 30th, 1889, and January 11th, 1890, and that the minutes of testimony hereto annexed, comprising 91 pages, containing 176 folios, contain a full, true and complete record of all the testimony taken before me as such standing examiner on behalf of the complainant herein; that the witnesses Augustin Daly, Harold
77 Swain, George B. Heath, August Wachs and John C. Clark, whose testimony appears hereto annexed, were the only witnesses examined on behalf of the complainant, and were by me each first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth, in the above-entitled action, and that said witnesses thereafter each duly signed his testimony so taken before me, having first read over the same.

That the following exhibits were offered in evidence on behalf of the complainant, and were the only exhibits so offered in evidence on his behalf, viz:

"Complainant's Exhibits 1 and 2, of December 23d, 1889."

"Complainant's Exhibit Daly *vs.* Palmer, Bill of Complaint."

"Complainant's Exhibit Daly *vs.* Palmer, Notice of Motion, Affidavits, and Subpœna."

"Complainant's Exhibit Affidavit Henry D. Palmer."

"Complainant's Exhibit Affidavit of Clark & Whally."

"Complainant's Exhibit Affidavit of Meighan."

"Complainant's Exhibit Affidavit of Vincent."

"Complainant's Exhibit Affidavit of White and Others."

"Complainant's Exhibit Daly *vs.* Palmer, Order of Injunction."
"Complainant's Exhibit Certificate of Deposit in Clerk's Office."
"Complainant's Exhibit Certificate Deposit, Librarian of Congress."
"Complainant's Exhibit Brady Letter of February 17, 1889."
"Complainant's Exhibit Solicitor's Letter, February 20th, 1889."
"Complainant's Exhibit Brady Letter of February 24th, 1889."
"Complainant's Exhibit Solicitor's Letter of March 1st, 1889."
78 "Complainant's Exhibit Photograph."
"Complainant's Exhibit Programme of May, 1889."
"Complainant's Exhibit Programme of December, 1889."
"Complainant's Exhibit Letter from Librarian of Congress."
"Complainant's Exhibit Book, Library of Congress."

That all of said exhibits appear- hereto annexed are filed herewith, except the following exhibits which are already on file in the office of the clerk of this court, in the suit of Daly *vs.* Palmer, viz:

"Complainant's Exhibit Daly *vs.* Palmer, Bill of Complaint."
"Complainant's Exhibit Daly *vs.* Palmer, Notice of Motion, Affidavits and Subpœna."
"Complainant's Exhibit Affidavit Henry D. Palmer."
"Complainant's Exhibit Affidavit of Clark & Whally."
"Complainant's Exhibit Affidavit of Meighan."
"Complainant's Exhibit Affidavit of Vincent."
"Complainant's Exhibit Affidavit of White and Others."
"Complainant's Exhibit Daly *vs.* Palmer, Order of Injunction."

That no exhibits were introduced in evidence before me on behalf of the defendants during the taking of the complainant's testimony.

Dated New York, March 1st, 1890.

(Signed) SAMUEL A. BLATCHFORD, *Examiner.*

79 Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

Before Samuel A. Blatchford, Esq., Examiner.

Complainant's Proofs in Rebuttal Taken in the City of New York Before Samuel A. Blatchford, Examiner.

NEW YORK, *March 13th*, 1891.

Present: Stephen H. Olin, Esq., for the complainant; David Gerber, Esq., for the defendants Webster and Brady.

It is stipulated by counsel that the testimony may be taken by the examiner through a stenographer, and that the notes when written out may be signed by the witnesses with the same force and effect as if the testimony had been taken in the handwriting of the examiner.

THOMAS ALEXANDER, called on behalf of the complainant, and being duly sworn, testifies as follows:

Counsel for the defendants objects to the taking of any further testimony, on the ground that the time to take the testimony has expired; that at the first session, held December 23, 1889, it was stipulated that the closing of the testimony shall be and is
80 extended until thirty days after notice, given by either party to the other, that the testimony shall be closed. On the 22d of October, 1890, complainant's counsel took advantage of that stipulation by the service upon defendants' attorney of a notice that the testimony shall be closed within thirty days. Defendants' counsel further states that he will not object to the taking of any further testimony by the complainant, provided he may have the right to call one additional witness as part of his case within twenty days after complainant closes his proofs, or within twenty days from date.

Complainant's counsel states that the notice of terminating the taking of the testimony referred only to the testimony of the defendants having been taken, and that no notice has ever been served limiting the time for taking the complainant's testimony in rebuttal, and he consents that the defendants may call the witness referred to at any time within fourteen days of this date.

Complainant's counsel files with the examiner notice of the examination of this date, which the examiner marks "Complainant's Exhibit Notice of Examination on March 13th, 1891."

Counsel for defendants objects on the same grounds and for the same reasons as stated in the objection to the taking of further testimony.

Direct examination of the witness by Mr. OLIN:

Q. 1. Give your name, age, residence and occupation?

A. Thomas Alexander, residence 920 St. Nicholas avenue, New York city, age thirty-seven, occupation deputy clerk United States district court for the southern district of New York.

81 Q. 2. How long have you been a clerk in that office?

A. Since April, 1867, off and on, from April, 1867, until October, 1878, and for the past four years.

Q. 3. Were you acquainted with the course of business in the office of the clerk of the district court of the United States for the southern district of New York in the year 1867 with reference to the filing of the titles and the depositing of volumes under the copyright law?

Counsel for defendants objects to the question as immaterial, irrelevant and incompetent.

A. I was, and at times assisted the copyright clerk.

Q. 4. Who was the copyright clerk at that time?

A. George A. Appleton.

Q. 5. What were his duties under the copyright law in that

office—I mean, what acts did he perform for the clerk of the district court?

Counsel for defendants objects to the question on the ground that it is incompetent, irrelevant and inadmissible.

A. He had entire charge of the copyright desk, receiving applications for copyrights, preparing the certificates of copyrights, filing books or papers and forwarding copyright matter at the proper time to Washington.

Q. 6. Is he now living?

A. No, he died several years ago.

Q. 7. Are you acquainted with his handwriting?

A. I am.

Q. 8. Have you produced, from the office of the clerk of the district court of the southern district of New York, any book?

82 A. I have produced a sort of day book, not a file of the office, but a day book kept by the copyright clerk, in which was entered——

Counsel for defendants objects to any further answer as not responsive to the question, and irrelevant, immaterial and incompetent.

Q. 9. Is that the book which you now hold in your hand?

A. Yes.

Q. 10. What is that book?

Counsel for the defendants objects to the question on the ground that it is incompetent; the book speaks for itself.

A. It is a day book in which are entered the titles of copyrights, when tendered, the nature of the article upon which the copyright was sought, the date of the application for it, and the time when the article itself was deposited.

Q. 11. What is the date of the first entry in that book?

A. April 1st, 1867.

Q. 12. And how long does and to what date do entries continue?

A. April 30th, 1869.

Q. 13. In whose handwriting are the entries in that book?

A. The handwriting of George A. Appleton.

Q. 14. Have you seen him make entries in that book?

A. I am looking to see if there are other parties' handwriting there—there are one or two entries in other parties' handwriting.

Counsel for defendants objects to the question; question withdrawn.

Q. 15. When did you first see that book?

A. That is a hard question to answer.

83 Q. 16. Can you say about?

A. I have no positive recollection of this book at that time but I was handling his books daily, and suppose I must have handled this one.

Q. 17. Will you turn to the first day of August, 1867, and read

that entry, reading the headings of the columns as they appear on the first page?

Counsel for defendants objects to the question as incompetent, irrelevant and inadmissible; that the book itself has not been offered in evidence, and could not be, as being incompetent, and that the contents cannot be injected into the case in this form. Further, that this witness did not make the entries, and has no personal knowledge of the particular entry to which his attention is called, and is asked to testify to the entry alleged to have been made by a deceased person.

Counsel for complainant offers the entry in evidence, and also the headings of the columns, and asks the witness to put the matter on the record, as this is a record which he cannot take from the office and produce in court.

Counsel for defendants objects to the introduction in evidence of the portion of the record offered by complainant's counsel, upon the grounds stated and objections taken to the last question propounded to the witness, and that it purports to be the private book or memorandum of the deceased.

The book is marked "Complainant's Exhibit List of Records of Copyrights."

Q. 18. When were the entries made in that book?

Counsel for defendants objects to the question on the same grounds as before.

84 A. In the regular course of business daily as the articles were presented.

(The witness reads from the book:) "List of records of copyrights, U. S. district clerk's office, southern district of New York. Number of works deposited, 833; date of entry of title page, August 1st; class, book; title, Under the Gaslight; date of deposit of copy of work, August 1st."

Q. 19. What was it the practice to enter under the first column, "Number of work deposited"?

Counsel for defendants objects to the question as immaterial, irrelevant and incompetent.

A. It was the custom of the office to begin a new series of numbers after each shipment of works to Washington, and the number 833 indicates that this was the 833d application for a copyright since April 1st, 1867.

Q. 20. What was it the practice to enter in the second column marked "Date of entry of title page"?

Counsel for defendants objects to the question upon the same grounds as to the previous question.

A. The time when the application for the copyright was made.

Q. 21. What was it the practice to enter in the 3d column marked "Class"?

Counsel for defendants objects to the question upon the same grounds as before.

A. The nature of the article upon which the copyright was sought.

85 Q. 22. What was it the practice to enter in the 4th column marked "Title"?

Counsel for defendants objects to the question upon the same grounds as before.

A. The title of the article.

Q. 23. What was it the practice to enter under the 5th column, "Date of deposit of copy of work"?

Counsel for defendants objects to the question upon the same grounds as before.

A. The time of the receipt in the office of the copy of the work.

Q. 24. Do you recognize the entry which has just been offered in evidence, No. 833—do you recognize the handwriting?

A. I do.

Q. 25. Whose handwriting is that?

Counsel for defendants objects to the question.

A. In the handwriting of George A. Appleton.

Q. 26. Can you state from your knowledge of the practice of that office whether or not the record offered in evidence shows the deposit of any articles?

Counsel for defendants objects to the question as incompetent, immaterial, irrelevant and not a proper method of proof.

A. It does, for the reason that it was the duty of the clerk who kept this book, on receipt of a book deposited under the copyright law, to make an entry on the last column of this book of the time of its receipt and such an entry is made opposite the item 833.

86 Q. 27. And from your knowledge of the custom of the office what article is shown to have been deposited by that entry, and when?

Counsel for defendants objects to the question as immaterial and incompetent and inadmissible.

A. The book entitled "Under the Gaslight" on August 1st, 1867.

Q. 28. What became of the books deposited at that time in the clerk's office, if you know?

A. They were forwarded to one of the departments in Washington, the Department of the Interior I think.

Q. 29. Are those books deposited at that time now on file in this office here in New York?

A. They are not. I always assisted the copyright clerk in making up the parcel——

Counsel for defendants moves to strike out that part of the answer after the words "they are not" as not responsive to the question.

A. I always assisted the copyright clerk in making up his parcel of works to forward to Washington. It was our custom for one, either he or I——

Counsel for defendants objects to the witness stating any custom as not responsive and as immaterial and irrelevant to the issues.

A. It was the custom for either he or I to hold this list of works and call off in regular rotation the name of the works and the other party would look up among the pile of books or copyright matter that we had in the office for the article called, and when it was found place it on one side for the parcel of goods to be sent
87 to Washington, the party holding this book checked in lead pencil the margin on the left-hand side of the book.

Q. 30. Do you find any check opposite the entry offered in evidence No. 833?

Counsel for defendants objects to the question as immaterial, irrelevant and incompetent, the witness having no personal knowledge of the matter, not having made the check personally, nor having seen it.

A. I do, sir.

Q. 31. From your knowledge of the usage of the office, are you prepared to testify from that entry and that check whether or not the work "Under the Gaslight" was put in the bundle to go to Washington?

Counsel for defendants objects to the question as immaterial, incompetent and irrelevant.

A. I should say it was.

Cross-examination by Mr. GERBER:

X Q. 32. Are there any entries, Mr. Alexander, that are in that book in your handwriting?

A. I don't think so; I have not gone through the book carefully, but I don't think there are.

X Q. 33. Have you any personal knowledge in reference to or connected with the entry as to which you have testified?

A. Nothing more than that it is in the handwriting of the copyright clerk, and is his memorandum of the copyright works.

X Q. 34. Do you know whether Mr. Appleton kept any book of titles filed or books deposited prior to April 1st, 1867?

A. My impression is he came about that time. Up to about
88 that time a Mr. Wilmarth who had been copyright clerk became clerk in charge of bankruptcy and Mr. Appleton took his place.

X Q. 35. Do you know whether Mr. Wilmarth kept any book of the character of the one produced?

A. He did, sir.

X Q. 36. Do you know where that book is?

A. Yes; we have them in the office—we have not the regular

files, but we have a broken lot of books, I think the book just before that is there—I am not sure.

X Q. 37. Then the book which you produced and of which a portion has been put in evidence, you say is Mr. Appleton's memorandum book of titles filed and books deposited in the United States district clerk's office?

A. It is an office memorandum book kept by Mr. Appleton.

X Q. 38. Do you remember ever having seen the title or book which in this book is called "Under the Gaslight"?

A. I do not.

X Q. 39. Is this book which you have produced open to the inspection of any one who may apply to your office, who may desire it?

A. Yes; it is not regularly kept upon the files of the office, but now it is found anybody is welcome to see it.

X Q. 40. So it is shown to any person as a matter of courtesy, having now been found?

A. Yes.

X Q. 41. Did you make a special search for that book for the purpose of testifying in this case?

A. I did, I had a special search made.

X Q. 42. Had the book been stowed away or was it in the office?

A. It was in a storage room on the upper floor—the fifth floor of our building where we put out books and papers that we consider will never be called for again.

89 X Q. 43. Do you have stored in that room your judgment docket of 1867?

A. We have not—the judgment dockets are kept in our safes.

X Q. 44. Do you have stored in that room any of your public records that contain entries of papers filed in 1867?

A. I cannot answer that question. I suppose we probably have, but the material in that room is supposed to be books, accounts, papers, &c., of no value. I cannot tell whether there is such a book as you mention or not.

X Q. 45. Where do you keep books, records and papers of 1867 which are considered of value?

A. We keep them in the record-rooms on the third floor of the building where our regular offices are and on the fourth floor of the building, one set of rooms on each floor.

X Q. 46. Those two you have mentioned are public record-rooms, are they not, especially the one on the fourth floor?

A. All the rooms connected with the office are considered public rooms, but in these two sets of rooms we keep what we consider live papers as well as a great deal of material that will probably never be called for again.

Redirect examination by Mr. OLIN:

R. D. Q. 47. Was there any other book kept by the copyright clerk in the performance of his duties at that time?

A. He kept a register of certificates at that time.

R. D. Q. 48. Was that a book of original entry?

A. Yes.

R. D. Q. 49. I show you "Complainant's Exhibits Certificate of Deposit in Clerk's Office, S. A. B., examiner," and ask you whether that is the form of the certificates contained in that book?

A. As I recollect the form in use, that seems to be it.

90 R. D. Q. 50. So that that register consisted of a number of pages, each one of them being a blank certificate in that form?

A. Yes.

R. D. Q. 51. And the entry made in that way to fill up the name and date, etc., written?

A. It was really the certificate of which a copy was issued.

R. D. Q. 52. What was done with those certificate registers?

A. My impression is that when the law was changed centralizing the copyright business of the country—somewhere in Washington, I think—all those records were sent on there. I have a recollection of something of that kind being done, but cannot testify positively as to that.

R. D. Q. 53. Those registers are not now in the clerk's office here, are they?

A. None of them.

R. D. Q. 54. Do you know of any other book containing entries relating to copyrights during the period embraced between the first and last entries in that book which you have produced here today that are now in the office of the clerk here?

A. I do not. I had a thorough examination made, and this is the result.

Recross-examination by Mr. GERBER:

R. X. Q. 55. You have testified as to your recollection of the form of certificates contained in the certificate book, to which your attention has been called, in that form do the words "Work deposited this — day of ——" also appear after the words "Clerk of the southern district of New York"?

A. I cannot recollect.

THOMAS ALEXANDER.

Subscribed and sworn to before me, this 18th day of March, 1891.

SAM'L A. BLATCHFORD, *Examiner.*

Hearing adjourned to a date to be fixed by notice.

91 APRIL 7TH, 1891—10 a. m.

Present: Counsel as before.

Complainant's counsel offers in evidence notice of further examination, which is marked "Complainant's Exhibit Notice of Further Examination."

AUGUSTIN DALY, recalled and examined by Mr. Olin, testifies as follows:

Counsel for defendants objects to the examination of Mr. Daly on the same grounds as are stated in his objection to the examination of the former witness.

Q. 1. Has it been part of your business to buy plays, and are you acquainted with the value of them?

A. Yes.

Q. 2. Can you state the minimum value of this play of "Under the Gaslight"?

Counsel for the defendant- objects to the question as immaterial, irrelevant, not the proper measure of damages, in any event, and that this is not the proper time to go into the question of damages, if any.

A. The play to me this year has been worth on a contract $75 a week—an estimate of $75 a week for forty weeks; that was the contract for this year; I am offered the contract.

Counsel for defendants objects to this answer upon the same grounds as to the question, and particularly to the part the witness is about to give, on the ground that it is not responsive to the question, and in any event is incompetent evidence of the value.

92 A. I would not sell the play if a person wished to make an offer or wished to buy it from me outright entirely. I should want more than $5,000 for it.

Q. 3. Do you consider it worth that?

A. Fully.

Q. 4. Did you ever see the play, "The Last Dollar"?

A. I did not. I never heard of it until this case came up; never heard anything about it.

Q. 5. What is this book which you have produced?

A. It is supposed to be a translation of the French play of the "Bohemiens of Paris," and this is called "The Bohemiens." It is to all intents and purposes the same play.

Counsel for complainant offers the play in evidence.

Counsel for defendants objects to the introduction in evidence as immaterial, irrelevant, incompetent, not proper in rebuttal, and with no sufficient evidence of proper translation or date of publication.

The book is marked "Complainant's Exhibit The Bohemiens."

Q. 6. What is this book that I show you?

A. That is the original French play from which the previous one was translated and adapted.

Counsel for complainant offers this book, being "Les Bohemiens de Paris, Drame en cinq Actes et huit Tableaux, par MM. Adolphe D'Ennery et Grange," in evidence.

Counsel for defendants objects on the ground that it is immaterial, incompetent, and irrelevant.

The book is marked "Complainant's Exhibit Les Bohemiens de Paris."

93 Cross-examination by Mr. GERBER:

X Q. 7. When did you get possession of the book "Complainant's Exhibit The Bohemiens"?

A. It was hunted up from my library within a year; I have had it in my possession I don't know how long, within ten years.

X Q. 8. Can you remember now where you got it from?

A. No, I bought it in a lot of plays.

X Q. 9. Did you have it at the time you wrote the play, "Under the Gaslight"?

A. No.

X Q. 10. Do you know whether you purchased it or received it as a present from some person?

A. I purchased it.

X Q. 11. Can you explain the words on the first page of the book "E. L. Davenport from the Boston museum"?

A. Probably it was in a lot of plays belonging to Mr. Davenport; I bought a lot after his death; I could not tell; I bought a lot of them; I could not tell which certain lot; they were all bought without inventory or bill; there are lots and bundles that are purchased in that way.

X Q. 12. Have you ever seen a copy of this publication other than the one you have produced?

A. No, I don't think I have; I may have done so, but I cannot recall it.

X Q. 13. Do you know that any can be purchased in this country?

A. I could not tell.

X Q. 14. Or in London?

A. It belongs to the whole set; it is a set of plays; possibly in the libraries abroad, but I could not tell how they are preserved.

X Q. 15. Did you ever compare the English work "Complainant's Exhibit The Bohemiens" with the French work you have produced?

A. With a translation of it?

X Q. 16. In English.

94 A. Yes.

X Q. 16½. That is not given of the French?

A. Yes.

X Q. 17. You don't know that this was a correct translation?

A. I could not tell; as we compared the translation of the French play with this work we could detect all the way through, that one was an adapted translation of the other, or an adaptation of the translation of the other book. That they are to all intents and purposes one a copy of the other.

X Q. 18. Have you read both?

A. I have read the translation of the French play which I produced today, and also "The Bohemiens," which I have produced today.

X Q. 19. Have you ever read the French play?

A. No, I don't read French.

X Q. 20. Is it not a fact, Mr. Daly, that after a melodrama is produced and continued for a number of years—say five years—that it deterio-ates in value?

A. That depends altogether on the play, what the life is; in some plays there is long life—just as some infants grow to manhood and are then stronger, and some infants grow to manhood and are then puny, there are certain plays that are strong in their original production and then grow and grow, then they might lie idle for a while and revive tenfold—say "The Streets of New York;" "The Streets of New York" was originally produced as "The Poor of Paris," disappeared from the theatres for a number of years, and then under its new title "The Streets of New York" became a much more valuable play than "The Poor of Paris" was.

X Q. 21. In what class of theatres has this play of "Under the Gaslight" been produced?

A. In what has been called the popular theatres.

X Q. 22. The cheaper priced-houses?

A. Yes.

95 X Q. 23. Not in a first-class house such as the theatre you are manager of in this city?

A. No.

X Q. 24. Do you mean to claim that your play of "Under the Gaslight" is as popular or as profitable today as it was ten years ago?

A. I do not. Ten years ago "Under the Gaslight" was worth $250 a week and more.

X Q. 25. As royalty?

A. Yes.

X Q. 26. What is the royalty today?

A. I am in receipt of $75 a week.

X Q. 27. From whom?

A. Arthur Rehan, a contract with him. I have contracted also with Stockwell in San Francisco for $100 a week from him.

X Q. 28. How recently?

A. Within three or four months.

X Q. —. How long was that contract with Mr. Stockwell?

A. At any time he chooses to produce it during his season he is to pay $100 a week.

X Q. 30. How much was the royalty that you derived from the production of "Under the Gaslight"—I give it the title they have been in the habit of using in the course of this examination, not its full title—during the past year?

A. I have a contract with Arthur Rehan for forty weeks at $75 a week.

X Q. 31. That is all you have realized?

A. That is all beginning a year back from this.

X Q. 32. How much were your royalties previous?

A. I could not say a year previous to that.

X Q. 33. About?

A. I could not recollect.

X Q. 34. Did you realize anything?

A. Yes, I could not tell what it was that year—within $1,000.

X Q. 35. How much were your royalties, say in ten years, for any one year?

96 A. I could not say without recovering my contracts.

X Q. 36. Can't you recollect?

A. No, I should say my royalties for ten years have never been less than $1,000 a year.

X Q. 37. Have your royalties decreased any during the last three years?

A. Three years I had a contract with a man named Turner at $100 a week; then came this case. This production of "After Dark"—I mean the publication of the question of my rights, and Turner refused to pay his later royalties, and gave me no end of trouble in regard to them, and I think the publication of that was much the cause of my having no contract the year following, but this present year Arthur Rehan took the play in hand, to go through the West and South and North, and made a contract for $75 a week.

X Q. 38. And besides that——

A. There have been occasional performances by Mr. Stockwell, and there is a case now for royalties in Oregon where they refused to pay on account of these legal question-.

X Q. 39. What would you say was the value of your play in 1886?

A. At least $1,000 a year.

X Q. 40. And now you fix your value at $1,000 a year also?

A. I should say so.

X Q. 41. You fix the gross value of the play at about $5,000?

A. I would not say less than $5,000; I might be in need of a ready sum of money and be offered $5,000 for a term of years, not knowing what I would get I would take my risk, and so I might go and accept $5,000 for it.

The signature to the testimony of this witness is waived.

97 It is suggested on the record by consent of counsel that Dion Boucicault died on the 18th day of December, 1890.

APRIL 9TH, 1891.

By consent of counsel the foregoing testimony of Augustin Daly is corrected by the addition of the following statement, with like force and effect as though made by said Daly while on the stand:

"After leaving the examination on April 7th, I began to have some doubt as to whether the sum of money (in all about seven or eight hundred dollars) I had received this season from Stockwell in California were all for performances of 'Gaslight.' I know he had made a contract with my attorney in San Francisco to play 'Gaslight' and other of my plays, and he had played some—but just how many times of each I could not remember; so I telegraphed for information, and the enclosed telegraph reply corrects my im-

pression; upon reading over my evidence of April 7th, pray correct what you think necessary to make the statement I made exact in this particular."

The telegram above referred to is as follows:

"The Western Union Telegraph Company.

Received at 1227 Broadway, cor. 30th St., New York, 4/8, 1891.

Dated SAN FRAN., CAL., 7.

To Augustin Daly, Daly's theatre:

Stockwell should have done 'Gaslight' before this year, but Arthur Reahan arranged with him to do it now. He is playing it this week at Alcazar, and will pay one hundred at end of week, have not collected from any one else, nor has it been done.

JNO. M. PHRETEN."

Complainants close their case.

98 Circuit Court of the United States, Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

To the circuit court of the United States for the southern district of New York:

I, Samuel A. Blatchford, one of the standing examiners of this court, do hereby certify that pursuant to the notices of taking testimony hereto annexed and marked respectively "Complainant's Exhibit Notice of Further Examination," the testimony on behalf of the complainant that was taken at the city of New York in rebuttal, was taken before me, as one of the standing examiners of this court, at my office, No. 16 Exchange place, in the city of New York, on the 13th day of March and the 7th and 9th days of April, 1891, respectively, and that the minutes of testimony hereto annexed, comprising twenty-seven pages and containing fifty-three folios, contain a full, true and complete record of all the testimony taken and proceedings had before me as such standing examiner on behalf of the complainant herein, under the notices aforesaid; that the witnesses Thomas Alexander and Augustin Daly, whose testimony appears hereto annexed, were the only witnesses examined before me on behalf of the complainant, and the witness
99 Thomas Alexander was by me first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth in the above-entitled action, the witness Augustin Daly having been previously duly sworn and examined before me on the complainant's *prima facie* case; and said Thomas Alexander thereafter duly signed his testimony so taken before me, having first read over the same; the signing of his testimony by the wit-

ness Daly having been waived by consent of counsel, such waiver appearing in the minutes hereto annexed.

That the following exhibits were offered in evidence on said examination on behalf of the complainant and were the only exhibits so offered in evidence either on his behalf or on behalf of the defendants, viz:

"Complainant's Exhibit Notice of Examination on March 13, 1891."

"Complainant's Exhibit List of Records of Copyrights."

"Complainant's Exhibit Notice of Further Examination."

"Complainant's Exhibit The Bohemiens."

"Complainant's Exhibit Les Bohemiens de Paris."

That all of said exhibits appear hereto annexed and are filed herewith, except the exhibit marked "Complainant's Exhibit List of Records of Copyrights," which was produced by the witness Thomas Alexander from the files of the clerk of the district court of the United States for the southern district of New York, which has been returned to the office of said clerk, and the portions of the entries in said exhibit, which were especially offered in evidence by the complainant, are set forth in full in the foregoing minutes of testimony.

Dated New York, April 10th, 1891.

SAM'L A. BLATCHFORD, *Examiner.*

100 *Complainant's Papers on Motion for a Re-argument of Complainant's Motion for an Injunction.*

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the court-house in the city of New York, on the 20th day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Hon. E. Henry Lacombe, judge.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

Upon reading and filing the bill of complaint herein, with the affidavits of Augustin Daly and Harold Swain, and on motion of Olin, Rives & Montgomery, solicitors for the complainant, it is hereby

Ordered, that the defendants show cause, if any they have, before the judge of the said court at the court-house in the city of New York in the said southern district of New York on the 24th day of May, 1889, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue
101 pursuant to the prayer of said bill. Such cause to be shown on the said bill, and the affidavits of Harold Swain hereto annexed and to be herewith served.

Service of a copy hereof on or before May 23d, 1889, shall be sufficient.

(S'g'd) E. HENRY LACOMBE.

Service of the foregoing order upon the defendants George P. Webster and Henry C. Miner, not having been made in due time, it is hereby further ordered that said defendants show cause as above ordered on the 31st day of May, 1889, at the above-named time and place. Service of a copy of this order on said defendants on or before the 28th day of May, 1889, shall be sufficient.

Dated New York, May 25th, 1889.

(S'g'd) ADDISON BROWN,
U. S. Dist. Judge.

Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

Harold Swain, being duly sworn, says:

My name is Harold Swain. I reside at 841 Sixth avenue
102 in the city of New York. I am over twenty-two years of age; am a graduate of Harvard University, and a student of law in the office of Olin, Rives & Montgomery, the complainant's solicitors.

I have read the decision of Blatchford, J., in the case of Daly *vs.* Palmer *et al.*, reported in 36 Howard's Practice Reports, and I have also read so much of the play of "Under the Gaslight," written by Augustin Daly, as contains what is known as the railroad scene.

On the 10th day of May, 1889, I went to the city of Philadelphia, and went to a theatre known as the National theatre, where I occupied a seat about five rows back from the stage, in the orchestra. I saw the production of the play of "After Dark," by a company known as the Webster-Brady Company. I received a programme of the performance, one very similar to which I annex hereto. It contained in the synopsis "The underground tunnel." I particularly noticed a portion of act IV, in which some part of the scene passes in an underground railroad tunnel.

Near the end of the first scene Gordon Chumley was drugged, while Old Tom sat by, pretending to be unconscious from the effects of liquor. When Old Tom started up denouncing the plot, he was seized and put through a trap-door near the front, and a little toward the left of the stage. A moment afterwards, Gordon Chumley was put through a trap-door a little further back, and more to the right.

The next scene shows a dark cellar, with Old Tom groping around for means of egress. He sees a sort of latticed window at the back of the scene and to the right, climbs up to it, and says that he sees

Gordon Chumley being lowered into the railroad tunnel. Old Tom comprehends the situation, and hunts around the cellar for something with which to break his way into the tunnel and rescue Gordon Chumley. He finds an iron bar, which he endeavors to
103 wrench from its fastenings. Meanwhile, he is soliloquizing in an excited manner, saying that he must save his old friend. He finally says that his strength fails him, when the whistle of an engine is heard. He makes a final effort, and the bar drops with a resounding ring to the floor. This occurs at the left-hand side of the stage. He rushes across the stage to the right, going off at the right wing.

The scene quickly changes by the disappearance of the back wall of the cellar. Gordon Chumley is seen hanging over the rails of a railroad track, suspended by a rope under his arms, at such a height as would cause him to be struck by a passing engine. He is evidently unconscious, and his body is twisting.

The scene now shows the rear side and top of an arched railroad tunnel. Blows are heard above and a little behind where Gordon Chumley is hanging. Bricks and mortar begin to fall, and a hole is finally made in the arch of the tunnel, and Old Tom jumps through it. During all of this scene, up to this point, the whistling and rumbling of an engine are heard. Old Tom seizes the body of Gordon Chumley and pulls it towards the audience, just in time to prevent its being struck by a railroad engine, with one car attached, which passes whistling and shrieking across the stage.

HAROLD SWAIN.

Sworn to before me this 18th day of May, 1889.

GEO. B. HEATH,
Notary Public, N. Y. Co.

104 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
against
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } *ss:*

Harold Swain, being duly sworn, says:

I am a student at law in the office of the complainant's attorneys. On the 18th day of May, 1889, at or near the northeast corner of Grand street and the Bowery, in New York city, I saw a large colored poster about seven feet by fourteen feet in dimensions. On it were the words "Boucicault's 'After Dark.'" It represented a man lying unconscious across the rails of a railroad track, with a locomotive seeming to approach at full speed. Another man is in the act of getting through an irregular hole in the arched brick wall at the side of the track. He seems to be coming towards the man on the

track, and bricks are seen falling from the hole. This larger poster was accompanied by other smaller ones, some of which were representations from the play "After Dark," and some of which had the words "People's theater, May 20," printed on their face.

In a window near by I saw a poster which was substantially a smaller representation of the aforesaid large poster. On this were the words "Webster-Brady Combination Dion Boucicault's Famous Cyclorama of City Life After Dark."

HAROLD SWAIN.

Sworn to before me this 18th day of May, 1889.

GEORGE B. HEATH,
Notary Public, N. Y. Co.

105 United States Circuit Court, Southern District of New York.

DALY *vs.* BRADY. } Opinion on Motion for Injunction.

WALLACE, *J.:*

It is to be regretted that it must be held that the complainant has not a valid copyright to his dramatic composition "Under the Gaslight, a drama of life and love in these times," because the copy of the title deposited by him in the clerk's office of the district court reads: "Under the Gaslight, a romantic panorama of the streets and homes of New York."

The title to a copyright is purely statutory, and a performance of the conditions imposed by the laws of Congress is indispensable to its creation and to the existence of any literary property in the published work. Wheaton *vs.* Peters (8 Pet., 591), Merrell *vs.* Tice (104 U. S., 557). Among these conditions the statutes require the deposit of a printed copy of the title of the work before publication in the proper office, formerly the office of the clerk of the district court of the district of the residence of the author, and now the Librarian of Congress. A literal compliance is not requisite; a substantial compliance is. Callaghan *vs.* Myers (128 U. S., 617.) Donelly *vs.* Ives (20 Blatchf., 381). Baker *vs.* Taylor (2 Blatchf., 82). Jackson *vs.* Walkie (29 Fed. Rep., 15).

A verbal difference between the registered title and the published title would not necessarily invalidate the copyright; but, when the variance is so material that the substantial identity between
106 the two titles is doubtful, and might deceive the public into the belief that they refer to different publications and themes, it is fatal.

It is patent that there is such a material variance in the present case unless all the title except "Under the Gaslight" can be disregarded. This is not permissible. It will hardly do to segregate what the author has designated and deposited for registry as the title of his work as a unit into parts, and treat one part as the name and the other as descriptive matter, and eliminate the latter as a

part of the title. If such an analysis were ever permissible it could not well be made in the present case, because it is impossible to discriminate between what is the descriptive matter and what is the name. The drama might have been called "Under the Gaslight," or "A Drama of Life and Love in These Times," or "A Romantic Panorama of the Streets and Homes of New York," and either designation would be equally appropriate as a name or as descriptive matter. When two such names or descriptive terms are incorporated into the title each becomes an integral part of it; and it may be as reasonably contended that one part of the title can be dropped out as that the other can be.

The motion for an injunction is denied.

107 U. S. Circuit Court, Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
WILLIAM A. BRADY and Others, Defendants.

Please take notice, that on all the pleadings, affidavits and proceedings in this action, and on the affidavit of Stephen H. Olin, verified 24th June, 1889, a copy of which is herewith served upon you, a motion will be made at a stated term of this court before Hon. William J. Wallace, judge, to be held at the court-house in the U. S. post-office building in the city of New York, on the 17th of July, 1889, at 11 o'clock a. m., for leave to re-argue the motion for an injunction herein, and for such other order or relief as may be just.

Dated, N. Y., 10 July, 1889.

Yours, &c., OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

To A. J. Dittenhoefer, Esq., solicitor for defendants Brady and Webster; Howe & Hummel, solicitors for defendant Miner.

Stipulation.

(Endorsed upon back of above notice of motion.)

108 It is stipulated that the hearing of the within motion, shall stand over until the final hearing of the cause.

Dated 17 July, 1889.

A. J. DITTENHOEFER, *Def't.*
OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

U. S. Circuit Court, Southern District of New York.

AUGUSTIN DALY, Complainant,
against
WILLIAM A. BRADY and Others, Defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

Stephen H. Olin, being duly sworn, deposes and says:

I am an attorney and counsellor at law, and a member of the firm of Olin, Rives & Montgomery, who are solicitors for the complainant. I have acted, from time to time, for more than seventeen years last past, as attorney for Augustin Daly, and have had some knowledge of his business affairs. The copyright of the play "Under the Gaslight" has been, during that time, of great value. There have been oftentimes, periods when Mr. Daly has been receiving royalties from persons performing "Under the Gas-
109 light," and royalties from persons performing "After Dark."

I have never known of any performance of "After Dark" during the period which I have acted for Mr. Daly upon which a royalty has not been paid to him; and, similarly, I have known of no performance of "Under the Gaslight," except those under his management or license. The copyright of the play "Under the Gaslight" has produced several thousand dollars a year to Mr. Daly since it was taken out.

The complainant has not been in New York since the decision of the motion for an injunction in this case. He is now on his way, as I am informed and believe, to San Francisco, whence he will return in August.

S. H. OLIN.

Sworn to before me, this 24th day of June, 1889.

HAROLD SWAIN,
Notary Public, N. Y. Co.

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IN FIVE ACTS.

By AUGUSTIN DALY,

Author of "Leah the Forsaken;" "Griffith Gaunt," &c., &c.

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AS ORIGINALLY PLAYED AT THE NEW YORK THEATER IN THE MONTHS OF AUGUST, SEPT. AND OCT., 1867.

AUTHOR'S EDITION.

PUBLISHED BY

SAMUEL FRENCH & SON,
28 West 23d Street,
NEW YORK.

SAMUEL FRENCH,
89 Strand,
LONDON.

CAST OF CHARACTERS, AS PLAYED AT THE NEW YORK THEATER.

Produced August 12, 1867.	Reproduced December 4, 1867.
Ray Trafford [one of the New York "Bloods"]..Mr. A. H. Davenport.	*Ray Trafford* [one of the New York "Bloods"]...Mr. G. H. Clarke.
Snorkey [a returned Veteran, established as a Soldier Messenger, but open to anything else].....Mr. J. K. Mortimer.	*Snorkey* [a returned Veteran, established as a Soldier Messenger, but open to anything else].....Mr. J. K. Mortimer.
Byke [one of the men whom the law is always reaching for and never touches].....Mr. J. B. Studley.	*Byke* [one of the men whom the law is always reaching for and never touches].....Mr. Welsh Edwards.
Ed. Demilt [one of the rising Wall street generation]...Mr. Newton.	*Ed. Demilt* [one of the rising Wall street generation].....Mr. Neal.
Windel [his friend, "sound on the street"].....Mr. Reed.	*Windel* [his friend, "sound on the street"].....Mr. Reed.
Justice Bowling [of the Tombs Police Court]....Mr. Welsh Edwards.	*Justice Bowling* [of the Tombs Police Court].....Mr. W. H. Collins.
Counsellor Splinter [an Attorney of the Tombs Court]..Mr. Jas. Dunn.	*Counsellor Splinter* [an Attorney of the Tombs Court]..... Mr. T. L. Donnelly.
Bermudas [one of the under crust, a sidewalk merchant Prince, with a "banjo swarry"].....Mr. C. T. Parsloe.	*Bermudas* [one of the under crust, a sidewalk merchant Prince, with a "banjo swarry"] .....Mr. C. T. Parsloe.
Peanuts [a rival operator in papers and matches].....Master Shea.	*Peanuts* [a rival operator in papers and matches] ....Master Willie.
Lillywhite [another " " "].....Master Shay.	
Sam [a colored citizen, ready for suffrage when it is ready for *him*].....Mr. Williams.	*Sam* [a colored citizen, ready for suffrage when it is ready for *him*].....Mr. Williams.
Rafferdi (*nee* Rafferty), [an Italian Organist from Cork]..Mr. Sullivan.	*Rafferdi* (*nee* Rafferty)[an Italian Organist from Cork].Mr. G. Lingard.
The Sergeant of the River Patrol.....Mr. Hurley.	*The Sergeant of the River Patrol*.....Mr. Hurley.
Policeman 999.....Mr. Sampson.	*Policeman 999*.....Mr. Sampson.
Martin.....Mr. Fielding.	*Martin*.....Mr. Fielding.
Peter Rich [the Boy who was committed].....Master Willie.	*Peter Rich* [the boy who was committed].....Master Poore.
The Signal Man at Shrewsbury Bend.....Mr. H. Ryner.	*The Signal Man at Shrewsbury Bend*.....Mr. H. C. Ryner.
Members of the Tuesday Sociable, Court Officers, Dock Boys, &c.	Members of the Tuesday Sociable, Court Officers, Dock Boys, &c.
Laura Cortland [the Belle of Society].....Miss Rose Eytinge.	*Laura Cortland* [the Belle of Society].....Miss Irene Worrell.
Pearl Cortland [pretty, but no heart].....Miss Blanche Grey.	*Pearl Cortland* [pretty, but no heart].....Miss Sophie Worrell.
Peachblossom [a girl who was never "brought up," with the doleful ditty of "the Knight, the Dame, and the Murderous Rival"].....Mrs. Skerrett.	*Peachblossom* [a girl who was never "brought up," with the doleful ditty of "the Knight, the Dame, and the Murderous Rival"].....Miss Jennie Worrell.
Old Judas [the right hand of Byke].....Mrs. Wright.	*Old Judas* [the right hand of Byke].....Mrs. Wright.
Mrs. Van Dam [one of the voices of Society].....Miss Lizzie Davey.	*Mrs. Van Dam* [one of the voices of Society].....Miss Logan.
Sue Earlie [one of the echos of the voice].....Miss Mahon.	*Sue Earlie* [one of the echos of the voice].....Miss Wakeman.
Lizzie Liston [another echo].....Miss Macy.	*Lizzie Liston* [another echo].....Miss Macy.

Entered according to Act of Congress, in the year 1867, by AUGUSTIN DALY, in the Clerk's Office of the District Court of the United States, for the Southern District of New York.

SPECIAL NOTIFICATION.—All of Mr. Daly's Plays are secured by copyright. Managers and Stars are warned against permitting their production without the permission of the Author.

113 UNDER THE GASLIGHT.

ACT I.

SCENE 1st.—*Parlor at the Courtlands; deep window at back showing snowy exterior; street lamp lighted; time, night; the place elegantly furnished; chandelier.*

RAY TRAFFORD *is discovered lounging on tete-a-tete* (C.) PEARL *is at* (L.) *door taking leave of* DEMILT, WINDEL, MRS. VAN DAM, *and* SUE EARLIE, *who are all dressed and muffled to go out.*

Mrs. V. Good night! of course we'll see you on Tuesday.

Pearl. To be sure you will.

Demilt. Never spent a jollier hour. Good night, Ray.

Ray. (*On sofa.*) Good night.

Mrs. V. You won't forget the sociable on Tuesday, Ray?

Ray. O, I won't forget.

All. (*At door.*) Good night—good night! [*Exit,* L.

Pearl. Good night. (*Coming forward.*) O, dear! now they're gone, and the holiday's gone with them. (*Goes to window.*) There they go. (*Laughter without.*) RAY, do come and look at the VAN DAM'S new sleigh. How they have come out.

Ray. Yes, it's the gayest thing in the Park.

Pearl. (*Still at window* C.) I wonder where they got the money. I thought you said VAN DAM had failed.

Ray. Well, yes. He failed to pay, but he continues to spend.

Pearl. (*As if to those outside.*) Good night! (*Response from without as sleigh bells jingle—"Good night."*) I wish I was in there with you. It's delightful for a sleigh ride, if it wasn't New Year's. O! there's DEMILT over! (*Laughter outside—cracking of whips*—RAY *saunters up to window. Sleigh bells jingle, sleigh music heard to die away.* RAY *and* PEARL *wave their handkerchiefs.* RAY *comes down and sits,* C.)

Pearl. (*Closing lace curtains.*) Isn't it a frightful thing to be shut up here on such a beautiful night, and New Year's of all others. Pshaw! we've had nothing but mopes all day. O, dear! I hate mourning, though it does become me, and I hate everything but fun, larks and dancing. (*Comes down.*)

Ray. Where in the world is Laura?

Pearl. O! do forget her for a second, can't you? She'll be here presently. You're not in the house a minute but it's, "Where's LAURA?" "Why don't LAURA come?"

Ray. (*Taking her hand.*) Well, if anybody in the world
114 could make me forget her, it would be you. But if you had a lover, wouldn't you like him to be as constant as that?

Pearl. That's quite another thing.

Ray. But this doesn't answer my question—Where is she?

Pearl. I sent for her as soon as I saw you coming. She has hardly been down here a moment all this evening. O, dear! Now

don't you think I'm a victim, to be cooped up in this way instead of receiving calls as we used to?

Ray. You forget that your mother died only last summer. (*Rising.*)

Pearl. No, I don't forget. Pshaw! You're just like LAURA. She's only my cousin, and yet she keeps always saying—"Poor aunt Mary! let us not forget how she would have sorrowed for us."

Ray. (*Going towards back.*) Well, don't you know she would, too?

Pearl. I don't know anything about it. I was always at boarding school, and she only saw me once a year. LAURA was always at home, and it's very different. But don't let's talk about it. To die—ugh! I don't want to die till I don't want to live—and that'll not be for a million of years. Come, tell me—where have you been today? how many calls did you make? (*Sitting in tete-a-tete.*)

Ray. About sixty.

Pearl. That all? You're lazy. DEMILT and WINDEL made a hundred and thirty, and they say that's nothing. Won't you have a cup of coffee?

Ray. No.

Pearl. Ain't you hungry?

Ray. No—you torment.

Pearl. O, dear! I suppose it's because you're going to be married shortly to LAURA. If there's one time that a man's stupid to his friends, it's when he's going to be married shortly. Tell me whom you saw. (RAY *has sauntered off* (L.), *and is looking over cards on table.*) Where are you? Oh, you needn't be so impatient to see her. Do be agreeable; sit here and tell me something funny, or I shall drop down and fall asleep.

Ray. (*Over her shoulder*). You witch! Why didn't I fall in love with you?

Pearl. (*Laughing.*) I don't know; why didn't you?

Ray. You never keep me waiting. (*Listening off* R.) Ah, that's her step! No.

Pearl. Do sit down.

Ray. (*Sitting.*) This calling's a great bore; but as you and LAURA insisted I should go through it, I did. First I—(*Jumping up.*) I knew it was she. (*Goes to door,* R. H.: *meets* LAURA, *who enters.*) How you did keep me waiting. (*Kisses both her hands.*)

Laura. And you, sir, we have been looking for you since eight o'clock.

Ray. O, I was fulfilling your orders. I've been engaged in the business of calling, from ten o'clock in the morning, till now—(*looks at watch*—) ten at night.

Laura. Well, you can make this your last one, for you have leave to spend a nice long hour chatting here before you go. Won't you have some supper? (*Goes to bell.*) L. 2 E. *on table.*

Ray. I don't care if I do. I'm rather famished.

Pearl. Well, I declare! Did LAURA bring your appetite with her? (LAURA *rings.*

115 *Ray.* I don't know how it is, but she brings me a relish for

everything in life, I believe. LAURA, I think if I were to lose you I'd mope to death and starve to death.

Laura. Well, that's as much as to say I'm a sort of Life Pill. (MARTIN *enters door* L. H.) Supper. (MARTIN *exits.*)

Ray. You may joke about it,—but it's so. You take the lounge. (LAURA *and* PEARL *sit on tete-a-tete.*)

Pearl. You don't want me to go away, do you? (*Putting her head on* LAURA'S *shoulder.*)

Laura. Certainly not. What an idea!

Pearl. I'm sure you'll have time enough to be alone when you are married. And I do so want to talk and be talked to.

Laura. Well, RAY shall talk to you.

Pearl. He was just going to tell me about his calls today.

Laura. That's exactly what we want to hear about. Did you call on every one we told you to?

Ray. Every one. There was Miss——

Pearl. Did you go to HENRIETTA LISTON'S first?

Ray. Yes, and wasn't she dressed! Speaking of dress, are you going to have your new pink for the sociable, Tuesday?

Laura. Yes, PEARL, and I will do credit to the occasion, as it is our first for a year.

Ray. (*Taking* LAURA'S *hand.*) And *our* last.

Pearl. Our last!

Ray. LAURA'S and mine. For when we are married, you know, we shall be tabooed—where maids and bachelors only are permitted.

Pearl. O bless me! (*rising*). How do you do, Mrs. TRAFFORD?

Laura. (*Rising*) (*sadly*). I wish you hadn't said that, PEARL. You know the old proverb: "Call a maid by a married name."

Ray. Nonsense! (*Putting his arm about* LAURA'S *waist.*) It's only a few days to wait, and we'll live long enough, you know. For nothing but death shall separate us.

[MARTIN *appears at door* L.

Pearl. O, here's supper.

Martin. Beg pardon, Miss.

Laura. What's the matter?

Martin. There's a person below, Miss, who says he's been sent with a bouquet for you, Miss, and must deliver it in person.

Laura. For me? Whose servant is it?

Martin. I don't know, Miss, he looks like one of those Soldier Messengers—red cap and all that.

Laura. Show him up here.

[*Exit* MARTIN D. 2 E. L.

Pearl. How romantic. So late at night. It's a rival in disguise, RAY.

(MARTIN *re-enters showing in* SNORKEY, *with an air of disdain,* SNOR. *has a large bouquet in his hand, and his hat is under the stump of his right arm, which is cut off.*

Laura. You wished to see me?

Snorkey. (L. H.) Are you Miss LAURA COURTLAND?

Laura. Yes.

Snorkey. Then I was told to give you this.

Laura. (*Taking it from* RAY, *who has crossed* L. H. *and received it from* SNORKEY.) By whom?

116 *Snorkey.* Now, that's what I don't know myself! You see I was down by the steps of the Fifth Avenue Hotel, taking a light supper off a small toothpick, when a big chap dressed in black came by, and says he: "Hallo, come with me if you want to earn a quarter." That (*confidentially to all*) being my very frame of mind, I went up one street and down another, till we came here. "Just you take this up there," says he, "and ask for Miss LAURA COURTLAND, and give it to her and no one else."

Laura. It is some folly of our late visitors.

Snorkey. I'm one of the Soldier Messengers, Miss. We take to it very well, considering we had so little running in Uncle Sam's service.

Ray. (*As* SNOR. *is going* L.) Stop a moment, my man. Were you not one of the Twenty-second's recruits?

Snorkey. Yes, Captain; I remember you joined us in New York, and left us at Washington. Real fighting wasn't funny, you thought, and I began to think so too at Fredericksburg.

Ray. Poor devil.

Snorkey. There was a South Carolina gentleman took such a fancy to me at Fredericksburg! Wouldn't have no denial,—cut off my arm to remember me by; he was very fond of me. I wasn't any use to Uncle Sam then, so I came home, put a red band round my blue cap, and with my empty sleeve, as a character from my last place, set up for light porter and general messenger. All orders executed with neatness and dispatch.

Pearl. And Uncle Sam has forgotten you.

Snorkey. Ah! Miss, don't blame Uncle Sam for that, he's got such a big family to look after, I can't find fault if he don't happen to remember all us poor stumps of fellows.

Ray. (L. H.) So it seems.

Laura. (C.) (PEARL *takes bouquet.*) Poor fellow! (*To servant.*) MARTIN, be sure and give him a glass of wine before he goes.

Snorkey. (L. C.) I'm much obliged, Miss—but I don't think it would be good for me on an empty stomach—after fasting all day.

Laura. Well, MARTIN shall find you some supper, too.

Snorkey. Is this MARTIN? What a nice young man. Mayn't he have a drop of something, too? He must have caught cold letting me in, he has got such a dreadful stiffness in the back of his neck. [MARTIN *exit.*

Ray. (*Giving penciled address.*) Call on me at this place tomorrow, and you shan't regret it.

Snorkey. All right, Cap'n! I havn't forgot the Army Regulations about punctuality and promotion. Ladies, if ever either of you should want a Light Porter, think of JOE SNORKEY—wages no objection. [*Exit* L. H. *door.*

Pearl. (C.) (*Who has been examining the bouquet.*) O! Laura, only look—here's a billet-doux!

Ray. Nonsense! Crazy head! Who would dare (*takes bouquet*)—a letter! (*Takes a paper from bouquet.*)

Laura. A letter?

Pearl. I am crazy—am I?

Ray. (*Reads superscription.*) "For Miss LAURA COURTLAND. Confidential."

Laura. (*Laughs.*) Ha! Ha! from some goose who has made one call too many today. Read it, RAY—(*Offering letter.*)

117 *Ray.* "Dear LAURA —— (*Refusing the letter, and going to* PEARL.)

Laura. (*Looks at it a moment, when the whole expression of face changes. Then reads slowly and deliberately.* RAY *down* R. C. *with* PEARL.) "*I respectfully beg you to grant me the favor of an interview tonight. I have waited until your company retired. I am waiting across the street, now.*"

Pearl. (*Runs to window.*) A tall man in black is just walking away.

Laura. "*If you will have the door opened as soon as you get this, I will step over; if you don't, I will ring; under all circumstances I will get in. There is no need to sign my name; you will remember me as the strange man whom you once saw talking with your mother in the parlor, and who frightened you so much.*" What can be the meaning of this?—PEARL—no—(*goes to bell on table* L. H., *and rings.*)

Ray. LAURA, you——

Laura. Ask me nothing. I will tell you by-and-by.

[*Enter* MARTIN, L. *door.*

Martin. Missit——

Laura. Admit no one till you bring me the name.

Martin. I was about to tell you, Miss, that a strange man has forced himself in at the door and asks to see you, but will give no name.

Ray. Kick the rascal out! [*Cross to* L.

Pearl. Oh! don't let him come here.

Martin. He's a very strange-looking person, Miss.

Ray. I'll find out what this means! (*Is going to door* L., *when* BYKE *appears at it smiling and bowing.*)

Byke. (L. H.) I'll spare you the trouble, if you'll hear me a minute.

Ray. (L. C.) (*violently.*) Who are you, fellow?

Byke. Don't, I beg you. Don't speak so crossly; I might answer back—then you'd kick me out—and you'd never forgive yourself for it as long as I lived.

Ray. Your business? Come! Speak quickly and begone.

Byke. (*Coming down* L.) Business! on this happy day! I came for pleasure—to see Miss COURTLAND—my little pupil, grown so—only think, sir! I knew her when she was only a little child. I taught her music—she was so musical—and so beautiful—I adored her, and her mother told me I needn't come again—but I did—and her mother was glad to see me. Wasn't she, little pupil?—(*to* LAURA, *who is pale with terror, leaning on* PEARL. RAY C., BYKE L.)—and begged me to stay—but I said no—I'd call occasionally—to see my dear little pupil, and to receive any trifling contribution her mother might give me. Won't you shake hands, little pupil? (*Advances*

suddenly, when RAY *grasps him by the collar*—BYKE *glares at him a moment. Then, quickly as before.*) Don't! please, don't! The stuff is old, and I've no other.

Ray. The fellow's drunk! Leave the house.

Byke. What! after sending that touching bouquet?

Laura. It was you, then? I knew it.

Byke. You see she knows me. Ah! memory how it blooms again where the plough of time has passed.

118 *Laura.* Leave this house at once.

Byke. Not until I have spoken to you.

Ray. (*Seizing him.*) You miserable rascal.

Byke. Don't, pray don't! I weigh a hundred and ninety-eight pounds, and if you attempt to throw me about you'll strain yourself.

Laura. (*Crossing.*) Go. Tomorrow in the morning I will see you.

Byke. Thanks! I thank you, Miss, for your forbearance. (*To* RAY.) I am also obliged to you, sir, for not throwing me out at the window. I am indeed. I wish you good night, and many happy returns of the day. (*Bows and turns to go. Then familiarly to servant.*) Many calls today, John? [*Exit* L.

Ray. (*Runs to* LAURA, *who is pale.*)

Laura. (*Pointing after* BYKE.) See that he goes.

[*Exit* RAY L. *door.*

Laura. (*Taking both of* PEARL'S *hands in her own.*) Pearl, he must know everything.

Pearl. O, dear! this is dreadful! I do hate scenes.

Laura. He must know everything, I tell you; and you must relate all. He will question—he will ponder—leave him nothing to ask.

Pearl. If you wish it, but——

Laura. I desire it; speak of me as you will—but tell him the truth. (RAY *enters hastily,* L.) Stay with her. Don't follow me.

[*Exit* R.

Ray. (*Down* R. H.) Pearl, what does this mean?

Pearl. O, it's only a little cloud that I want to clear up for you.

Ray. Cloud—how? where?

Pearl. Don't I tell you I am going to tell you. Sit down here by me. (*She sinks into tete-a-tete,* C.)

Ray. (*Promenading.*) He said he knew her. And she gave him an interview for tomorrow. That drunken wretch——

Pearl. Do sit down. I can never speak while you are walking about so. (*Gets up, brings him to a chair,* R. H. *and makes him sit.*) Sit by me, won't you? for I've got something strange to tell you.

Ray. *You* serious! I'd as soon expect to see the lightning tamed. Well, I listen.

Pearl. I have something to say to you, RAY, which you must settle with your own heart. You love LAURA, do you not?

Ray. PEARL, I do more, I adore her. I adore the very air that she breathes. I will never be happy without her. I can swear *that.*

Pearl. LAURA is twenty now. How do you think she looked when I first saw her?

Ray. Were you at home when she first came into this earthly sphere?

Pearl. Yes.

Ray. Well then, I suppose she looked very small and very pink?

Pearl. She was covered with rags, barefooted, unkempt, crying, and six years old.

Ray. (*Shocked.*) Explain.

Pearl. One night father and mother were going to the opera. When they were crossing Broadway, the usual crowd of children accosted them for alms. As mother felt in her pocket for some change, her fingers touched a cold and trembling hand which had clutched her purse.

119 *Ray.* A pickpocket! Well.

Pearl. This hand my mother grasped in her own, and so tightly that a small, feeble voice uttered an exclamation of pain. Mother looked down, and there beside her was a little ragged girl.

Ray. The thief.

Pearl. Yes, but a thief hardly six years old, with a face like an angel's. "Stop!" said my mother. "What are you doing?" "Trying to steal," said the child. "Don't you know that it's wicked to do so?" asked my father. "No," said the girl, "but it's dreadful to be hungry." "Who told you to steal?" asked my mother. "She—there!" said the child, pointing to a squalid woman in a doorway opposite, who fled suddenly down the street. "That is OLD JUDAS," said the girl.

Ray. OLD JUDAS. What a name! But how does this story interest us?

Pearl. This child was LAURA. My father was about to let her go unharmed—but my mother said "No, it is not enough. We have a duty to perform, even to her," and acting on a sudden impulse, took her to our home. On being questioned there, the child seemed to have no recollection, save of misery and blows. My mother persuaded father, and the girl was sent to a country clergyman's for instruction, and there she remained for several years.

Ray. PEARL, you are joking with me.

Pearl. In beauty, and accomplishments, and dignity, LAURA (as mother named her) exceeded every girl of her age. In gratitude she was all that father could have wished. She was introduced as you know, into society as my cousin, and no one dreamed of her origin.

Ray. (*Starting up.*) LAURA, an outcast—a thief!

Pearl. (*Rising.*) No, that is what she might have been.

Ray. And this man—to-night

Pearl. All I know about him is, that four years ago this man came with a cruel looking woman, to see mother. There was a fearful scene between them, for LAURA and I sat trembling on the stairs, and overheard some awful words. At last they went away, the man putting money into his pocket as he left.

Ray. But who were they?

Pearl. LAURA never told me, and mother would not. But, of course,

they must have been LAURA's father and mother. (RAY *sinks on chair as if overcome.*)

Pearl. Mother made me promise never to tell anybody this, and you would have known nothing had not LAURA made me speak. You see, she would not conceal anything from you. (*Going to him.*) RAY, why don't you speak—shall I go after LAURA? Shall I tell her to come to you? Why don't you answer? (*Going.*) I'll go and tell her you want to see her. (*Pausing as she goes* R.) I'm going to send her to you, RAY.

[*Goes off* R. *still looking back at him.*

Ray. (*Starting up.*) What a frightful story. LAURA COURTLAND a thief! A drunken wretch who knows her history, and a squalid beggar woman who can claim her at any moment as their child. And I was about to marry her. Yes, and I love her. But what would my mother think? My friends? Society? No—no—no—I cannot think of it. I will write her—I will tell her—pshaw! she knows of course that I cannot wed her now! (*Goes to the table* L. U. E.) Here is paper. (*Sits.*) What am I about to do? What will be said of me? But I owe a duty to myself—to society—I must perform it. (*Writes.*) "LAURA, *I have heard of all from your sister.*" What have I said—(*crosses out last word*)—"from PEARL. *You know that I love you, but my mother will demand of me a wife who will not blush to own her kindred, and who is not the daughter of obscurity and crime.*" It is just; it is I who have been deceived. (*Folds letter and addresses it.*) I will leave it for her. (*Puts on light overcoat, which hangs on chair at back.*) I must go before she returns. Her step—too late! (*Crams the letter into pocket of overcoat.* LAURA *enters* R. H.)

Laura. (*Gently*). RAY.

Ray. Miss—Miss COURTLAND. (LAURA *looks at him a moment, smiles and then crosses* C. *without further noticing him, and sits down on tete-a-tete.*) What have I said? What ought I to have said? (*He takes a step towards her—she rises, without looking at him goes to window—looks out, then looks over books on table* R. H.)

Ray. LAURA—I——

Laura. Pshaw, where is my book?

Ray. What book do you want, LAURA?

Laura. Sir.

Ray. (*Repulsed.*) Oh!—(*pause*)—I've been a fool. How lovely she looks. (*He follows her mechanically to table* L.) Can I find it for you?

[LAURA *picks up a book and reseats herself.*

Laura. Don't trouble yourself I beg.

Ray. (*Coming forward and leaning over her seat.*) LAURA.

Laura. (*Without lifting her head.*) Well.

Ray. (*Toying with her hair.*) Look at me.

Laura. (*Turns round and looks full at him.*)

Ray. No, no, not that way; as you used to. You act as if I were a stranger.

Laura. They are only strangers who call me Miss COURTLAND. (*Resumes reading.*)

Ray. Forgive me, I beg you to forgive me. (*Coming round and sitting beside her.*) I was mad—it was so sudden—this miserable story—but I don't care what they say. O! do listen to me. I thought you hated reading.

Laura. I often wish that I were ugly, wretched and repulsive, like the heroine in this story. (*Seats herself.*)

Ray. (*Behind her.*) Why?

Laura. Because, then I could tell who really loved me.

Ray. And don't you know?

Laura. No; I do not.

Ray. Well, I know.

Laura. Do tell me then, please.

Ray. He has told you so himself a hundred times.

Laura. You.

Ray. I.

Laura. (*Laughing heartily at him, then seriously.*) How happy must those women be, who are poor, and friendless, and plain, when some true heart comes and says: I wish to marry you.

Ray. LAURA, you act very strangely tonight.

Laura. Will you put this book away?

Ray. (*Throws it on table.*) There LAURA. (*Seats himself beside her.*)

Laura. (*Rising.*) There's PEARL calling me.

Ray. (*Rising and taking her hand.*) LAURA, why don't you let me speak to you.

121 *Laura.* About what?

Ray. About my love.

Laura. For whom? Not me. This is only marriage and giving in marriage. I hate the very word.

Ray. You did not think so once.

Laura. I wish I had. I am frightened now; I begin to understand myself better.

Ray. And I am frightened because I understand you less.

Laura. Do not try to; good night. (*Up* R. C. *stops by door as she is going out,*) good night Mr. TRAFFORD.

[*Exit laughing,* R. 2 E.

Ray. I've been an ass. No, I wrong that noble animal. The ass recognized the angel, and I, like Balaam, was blind. But I see now. After all what have I to fear? (*Takes letter from pocket.*) No one knows of this, (*puts it in his pocket again.*) Let things go on; we'll be married, go straight to Europe, and live there ten years. That's the way we'll fix it.

[*Exit* L. 2 E. *Scene closes in.*

SCENE II.—(*1st Grooves*)—*The Gentlemen's coat-room at* DELMONICO'S *opening* (C.) *for hat and coat. Chairs* (L. H.) *Pier-glass on flat.*

(*Enter* WINDEL *and* DEMILT *muffled, and with umbrellas* L. 2 E. *They proceed to disrobe.*)

Dem. Phew! wet as the deuce, and cold, too. There'll be nobody here.

Wind. It's an awful night. The rooms are almost empty.

Dem. SAM! Where the dickens is that darkey? (*Enter* SAM R. *fetching in a chair, and boot-black. box and brush.*)

Sam. Here, sah.

Dem. (*Sitting in chair.*) Hurry up with my boots. Who's here?

Sam. Berry few gemman, sah; only lebben overcoats and ten overshoes. Bless de Lord—dem overshoes is spilin the polishin business.

Dem. Look out and don't give me any knocks.

Wind. (*Handing in his coat at window and getting check for it.*) I wonder if the COURTLAND girls have come yet.

Dem. What did LAURA COURTLAND ever see in TRAFFORD to fall in love with? The VAN DAM party is my fancy.

Wind. (*Brushing his hair at glass.*) She's ten years older than you, and has a husband.

Dem. Yes, a fine old banker, on whom she can draw for everything but attention and affection. She has to get that by her own business tact.

(*Other parties enter, exchange good-nights, and deposit their coats; some go out at once, some arrange themselves at glass.*)

Dem. That'll do, SAM, take my coat. (*Enter* RAY, L. 1 E.)

Wind. Hallo! TRAFFORD, this is a night, ain't it? Have the COURTLANDS come?

Ray. Not with me. Here, SAM, take my coat. (*His coat is pulled off by* SAM, *and four letters drop out.*) Stupid.

Dem. Save the pieces. Mind the love letters.

122 *Ray.* (*Picking them up.*) Look out well next time. There's that cursed letter I was going to send to LAURA. Confound it, I must destroy it when I go home. (*Puts letters back in overcoat pocket.*) (RAY *gets his boots touched up.*)

Dem. I say, TRAFFORD, what'll you take, and let a fellow read those? WINDEL, I guess if the girls could get into the cloak-room, it would be better than the dead-letter office. What a time they'd have! Are you ready?

Wind. What's the use of hurrying? There's no life in the party till LAURA COURTLAND comes. By Jove, TRAFFORD! you're in luck. She's the prettiest girl in New York.

Ray. And the best. (*March music heard.*)

Dem. There's the march music; let's go. (*Gets a final brush as they all go off* A 1 E.)

Ray. Come along. [*Exunt.*

Sam. (*Picking up a letter dropped from* RAY'S *pocket.*) Dere's anoder

of dem billy dooses; wonder if it am Mist' TRAFFORD's. Eh, golly! musn't mix dem gentlemen's letters,—musn't mix 'em nohow,—or an oberruling providence wouldn't be able to stop fighting in dis city for de nex month.

[*Exit, carrying a chair,* R. 1 E.

(*Scene draws off to dance music.*)

(*Wait till change of music before change of Sc.*)

SCENE III.—*The Blue Room at Delmonico's. Waltz-music as the Scene opens. Waltzers in motion.* PEARL *is dancing with Mrs.* VAN DAM.

(*Enter* TRAFFORD, DEMILT, *and* WINDEL, R. L. R.)

Pearl. There's RAY. I've had enough; I want to speak with him. (*Bursts away from Mrs.* VAN D., *runs up to* TRAFFORD. DEMILT *goes up to Mrs.* VAN D.)

Pearl. (To RAY.) You lazy fellow, where have you been?

Dem. You're not tired, are you?

Mrs. V. D. I feel as fresh as a daisy.

Dem. Have a waltz with me. (*Waltz music, piano, as they dance,* WINDEL *goes to* SUE EARLIE.)

Ray. (*Coming down with* PEARL.) Where's LAURA?

Pearl. She wasn't ready, and I was dying to come. Been fixed since eight o'clock; so I came with SUE EARLIE. So you made it up with LAURA.

Ray. Yes. Don't say anything more about the horrid subject. We've made it all up. But what on earth keeps her to-night? It's eleven already. (*Looking at watch.*) Confound it, I tremble every moment she's out of my sight. I fear that terrible man and his secret.

Mrs. V. D. (*Coming up with* DEMILT.) TRAFFORD, you look very uneasy. What's the matter?

Ray. O, nothing. I think I ought to go for LAURA. I will, too. (*Servant passes at back.*) Here! go up stairs for my overcoat. (*Gives the man a card, and he goes out.*)

Mrs. V. D. Nonsense! She'll be here in good time. You shan't leave us. Hold him, PEARL. We want a nine-pin quadrille; we haven't half enough gentlemen. Come, be jolly about it. You lovers are always afraid some one will carry your girls away.

Ray. (*Uneasy.*) I? I'm not afraid.

Pearl. Come, come! I never saw such a restless fellow.

(SERVANT *enters with coat,* C.)

SERVANT. Here's your coat, sir.

Mrs. Van D. Give it to me. I'm determined you shan't go. (*Takes coat carelessly.*) I'll make you a promise—if LAURA isn't here in fifteen minutes you shall have your coat, and may go for her.

Ray. Well, I suppose I'll have to wait.

Mrs. Van D. There; take him off, PEARL. (RAY *goes up with* PEARL. *To* SERVANT.) Here take this back. (*Flings coat to* SERV-

ANT. *As she does so, letters drop from it.*) Well, there's a mess! (SUE EARLIE *and another lady run forward and pick up letters.*) Love letters, of course!—(*Smelling them.*) Perfumed to suffocation.

Sue Earlie. Here's one for LAURA. It's unsealed and not delivered.

Mrs. Van D. (*Tremolo waltz music.*) A fair prize! Let's see it. (*Music. Takes and opens it. Puts on eye-glasses and reads.*) "*Laura*"—Well, come! That's cool for a lover. "*I have heard all from*"—— something scratched out—ah!—"*Your sister*, PEARL—*Your obscure origin—terrible family connexions—the secret of the tie which binds you to a drunken wretch—My mother, Society—will demand of me a wife who will not blush to own her kindred—or start at the name of outcast and thief!*

"Signed, RAY TRAFFORD."

(*All stand speechless and look at each other. All this time the rest have been dancing.*)

Sue Earlie. What can it mean?

Mrs. Van D. It means that the rumors of ten years ago are proven. It was then suspected that the girl whom Mrs. COURTLAND brought every year from some unnamed place in the country, and introduced to everybody as her niece, was an impostor, which that foolish woman, in a freak of generosity, was thrusting upon society. The rumors died out for want of proof—and before LAURA's beauty and dignity—but now they are confirmed. She is some beggar's child.

Sue Earlie. What do you think we ought to do? (TRAFFORD *surrenders* PEARL *to* DEMILT, *and comes down.*)

Mrs. Van D. Tell it—tell it everywhere, of course. The best blood of New York is insulted by the girl's presence. (TRAFFORD *coming down.*)

Ray. (R. H.) What have you three girls got your heads together for? Some conspiracy, I know.

Mrs. Van D. (*To ladies.*) Go girls—tell it everywhere.

Ray. (*As the ladies distribute themselves about the groups.*) What is it all about? Your face is like a portrait of mystery.

Mrs. Van D. (*Shewing letter.*) Look at this, and tell me what it means.

Ray. (*Quickly.*) Where did you get this?

Mrs. Van D. It is you who must answer—and Society that will question. So LAURA is not a COURTLAND?

Ray. (*Overcome.*) You know, then,——

Mrs. Van D. Everything; and will you marry this creature? You cannot. Society will not permit your sacrifice.

124 *Ray.* This is not your business. Give me that letter.

Mrs. Van D. Certainly; take it. But let me say one word—its contents are known. In an hour every tongue will question you about this secret,—every eye will inquire.

Ray. I implore you! Do not breathe a word for her sake. (*She turns scornfully away.*)

Mrs. Van D. The secret's not mine.

Ray. Who knows it?

Mrs. Van D. Look! (*Points to others who are grouped about whis-*

pering and motioning towards RAY. PEARL *enters here* E., *and speaks to lady and gents,* L. C.)

Ray. (*Wildly.*) What will they do?

Mrs. Van D. Expose her! Expel her from society in which she is an intruder!

Ray. You dare not!

[PEARL *comes forward* L.

Pearl. O, RAY! What is the meaning of this?

Ray. (*Bitterly.*) It means that society is a terrible avenger of insult. Have you ever heard of the Siberian wolves? When one of the pack falls through weakness, the others devour him. It is not an elegant comparison—but there is something wolfish in society. LAURA has mocked it with a pretence, and society, which is made up of pretences, will bitterly resent the mockery.

Mrs. Van D. Very good! This handsome thief has stolen your breeding as well as your brains, I see.

Ray. If you speak a word against her, I will say that what you utter is lie!

Mrs. Van D. As you please, we will be silent. But you will find that the world speaks most forcibly when it utters no sound.

Pearl. O, go and prevent her coming here.

Ray. That I can do, (*going up hastily sees* LAURA *entering at* C. D.) Too late. (*He retreats* R. C.)

Mrs. Van D. Come girls! Let us look after our things. They are no longer safe when such an accomplished thief enters.

(*Music low as* LAURA *enters, continues while all except* PEARL *and* RAY *pass out, eyeing her superciliously.* LAURA C., PEARL R.)

Pearl. RAY, Ray, why do you not come to her?

Mrs. Van D. (*Up* C. *of stage, surrounded by others.*) Are you not coming with us, TRAFFORD?

Pearl. (*To* LAURA.) Let us go home.

Laura. No; stay with *him,* (*pointing to* RAY, *who has held off.*) He shall not suffer the disgrace long! (*About to faint,* RAY *runs forward; she proudly waves him away.*) It is Heaven's own blow.

PICTURE—*Quick Curtain.*

R. RAY. LAURA AND PEARL C. Party at back.

125 ACT II.

(*Green Cloth down.*)

SCENE I.—*Interior of a Basement. Street and railings seen through window at back. Entrance to* F. *from* D. F. L. H. *Stove with long pipe in fire-place,* R. U. E. *Table between two windows at back, with flowers, &c. Humble furniture. Table* C. *three chairs. Closet at* E. L. H.

PEACHBLOSSOM *is discovered polishing stove* R. K. *a slip-shod girl a la Fanchon.*

SONG—PEACH:

A lordly knight and a lovely dame, were walking in the meadow,
But a jealous rival creeping came a-watching in the shadow;
They heeded not, but he whet his knife and dogg'd them in the shadow.
The knight was brave, and the dame was true, the rival fared but badly;
For the knight he drew and ran him through, and left him groaning sadly,
The knight and dame soon wedded were, with bells a-chiming gladly.

Peach. (*Talking while working.*) The stove won't shine. It's the fault of the polish I know. That boy that comes here, just fills the bottles with mud, and calls it stove polish. Only let me catch him. Ah! Ah! (*threat-ning gesture with brush.*) I declare I'd give it up if I didn't want to make everything look smart, before MISS NINA comes in. MISS NINA is the only friend I ever had, since I ran away from MOTHER JUDAS. I wonder where old JUDAS is now? I know she's drunk; she always was; perhaps that's why she never tried to find out what became of me. If she did she could not take me away. MISS NINA begged me off a policeman. I belong to her. I wonder why she ain't got any other friends? She's awful mysterious. Tells me never to let any strangers see her. She's afraid of somebody, I know. It looks just as if she was hiding. I thought only bad girls, such as I, had to hide. If I was good and pretty like her, I wouldn't hide from the President. (*Still polishing.*) (JUDAS *appears at window with basket of ornaments, &c.*)

Judas. Hum! Is your ma in my dear?

Peach. (*Starting.*) Oh! (*aside.*) Old JUDAS! She's found me out at last. No she h'aint, or she'd have got me by the hair before she spoke. That's *her* way.

Judas. (*Coming in at door.* PEACH *keeps her back towards her.*) Any old clothes to change for chany, my dear? Where's your ma's old skirts and shawls, my pet. Get 'em quick before mother comes in, and I'll give you a beautiful chany mug or a tea-pot for them. Come here, my ducky—see the pretty—(*recognizes* PEACH.) Eh! why you jail-bird what are you doing here? Are you sneakin' it? Answer me, or I'll knock your head agin the wall. (*Catches her by the hair.*)

Peach. You just leave me be? I'm honest, I am! I'm good.

Judas. You're good? Where's my shoe? I'll take the goodness out of you.

126 *Peach.* Oh, oh! please don't beat me. I ain't good. I'm only trying to be.

Judas. You're only trying to be, eh? Trying to be good, and

here's me as was a-weeping every night, thinking as you was sent up for six months. Who're you living with—you ain't a-keeping house, are you?

Peach. I'm living with MISS NINA.

Judas. NINA, what's she, concert-saloon girl?

Peach. No, she's a lady.

Judas. A lady—and have such baggage as you about. Where's my shoe, I'll make you speak the truth.

Peach. I don't know what she is. She met me when the police was taking me up for loafin' down Hudson Street, and she begged me off.

Judas. Has she any money?

Peach. No, she's poor.

Judas. Any nice clothes?

Peach. O, she's got good clothes.

Judas. Where are they?

Peach. Locked up, and she's got the key.

Judas. You're lying, I see it in your eye. You're always shame-faced when you are telling the truth, and now you're as bold as brass. Where's my shoe? (*Making a dash at her.*)

Peach. (*Shouting.*) There's MISS NINA (*as if curtseying to some one behind* JUDAS.) Good morning, miss.

Judas. (*Changing her tone.*) Ah! my pretty dear! What a good lady to take you in and give you a home. (*Turns and discovers the deception—in a rage.*) You hussy, (PEACH *retreats*) wait till I get you in my clutches again, my lady; and it won't be long. MISS NINA takes care of you, does she. Who will take care of her? Let her look to it. (LAURA *enters* D. F. *plainly dressed at back.*) Beg pardon, Miss, I just called to see if you had any old clothes you'd like to exchange.

Laura. No, I don't want anything, my good woman.

Judas. (*Eying her sharply and going to door.*) That's her—I'd know her anywheres! (*Malicious glance and exit.*)

Laura. You've been very good this morning, BLOSSOM. The room is as nice as I could wish.

Peach. Please 'm, I tried because you are so good to me. (LAURA *taking off her shawl and things.*) Shall I sweep out the airy? (LAURA *does not answer.*) I guess I'd better—then she'll be alone, as she loves to be. (*Takes broom and exit,* D. F.)

Laura. (*Solos. Opening a package and taking out photographs.*) No pay yet for coloring, 'till I have practiced a week longer. Then I shall have all the work I can do. They say at the photographer's I color well, and the best pictures will be given me. The best! Already I have had beneath my brush so many faces that I know, friends of the old days. The silent eyes seem to wonder at me for bringing them to this strange and lowly home. (*Picking up letters from table.*) Letters; ah! answers to my advertisement for employment. No, only a circular "To the lady of this house." What's that! (*Starting*) only BLOSSOM sweeping. Every time there is a noise I dread the entrance of some one that knows me. But they could never find me in New York, I left them all too secretly and

suddenly. None of them can expect I would have de-
127 scended to this. But it is natural, everything will find its level. I sprang from poverty, and I return to it. POOR PEARL. How she must have wondered the next morning—LAURA gone? But three months have passed, and they have forgotten me. RAY will cheer her. (*Wrangling outside,* PEACHBLOSSOM *bursts in dragging* BERMUDAS, *with his professional tape, pins, blacking and basket,* D. F.)

Peach. Here he is m'm.

Ber. Leave go, I tell yer, or I'll make yer.

Laura. What is the matter?

Peach. He's the boy that sold me that stove polish what isn't stove polish.

Ber. What is it then—s-a-a-y?

Peach. It's mud! it's mud at ten pence a bottle.

Ber. Ah! Where could I get mud? Ain't the streets clean? Mud's dearer than stove polish now.

Peach. And your matches is wet, and your pins won't stick, and your shoe-strings is rotten, there now!

Ber. Well, how am I to live; it ain't my fault, it's the taxes. Ain't I got to pay my income tax, and how am I to pay it if I gives you your money's worth? Do you think I'm Stewart—Sa-a-y?

Laura. Do let the boy alone, BLOSSOM. Send him away. (*Enter* PEANUTS *at door flat.*)

Peanuts. Extra! Hollo, BERMUDAS! how's your sister? Papers, Miss. Extra! Revolution in Mexico!

Laura. Dear, dear, this is the way I'm worried from morning till night.

Ber. Here, just you get out! This is my beat.

Peanuts. Vell, I ain't blacking or hairpins now, I'm papers—How'm I hurting you?

Ber. Vell, I'm papers at four o'clock, and this is my beat. Take care of me, I'm in training for a fight. I'm a bruiser, I am.

Peanuts. Hold yer jaw. (*They fight.*)

Peach. (*Beats them with broom.*) Get out with you. Both of you. (*Grand escapade and exit of boys.* D. F.)

Laura. Don't let be troubled in this way again. Have you got the things for dinner?

Peach. Lor, no, miss! It's twelve o'clock, and I forgot!

(PEACH *gets shawl, big bonnet from hooks on the wall, basket from closet, while* LAURA *opens her pocket-book for money.*)

Laura. What did we have for dinner yesterday, BLOSSOM?

Peach. Beefsteak, 'm. Let's have some leg o' mutton to-day. We've never had that.

Laura. But I don't know how to cook it. Do you?

Peach. No, but I'd just slap it on, and it's sure to come out right.

Laura. Slap it on what?

Peach. The gridiron.

Laura. (*Giving money.*) No, we'd better not try a leg of mutton to-day. Get some lamb chops, we know how to manage them.

Peach. (*As she is going.*) Taters, as usual, 'mum?

Laura. Yes; and stop BLOSSOM—while you're buying the chops, just ask the butcher—off hand—you know—how he would cook a leg of mutton, if he were going to eat it himself! as if you wanted to know for yourself.

Peach. Yes'm—but I'm sure it's just as good broiled as fried.

[*Exit* D. F.

128 *Laura.* Now to be cook. (*Laughing.*) "The Tuesday Sociable" ought to see me now. Artist in the morning, cook at noon, artist in the afternoon. (*Snorkey raps at the door* F. *and enters.*)

Snorkey. (*With letter.*) Beg pardon, is there anybody here as answers to the name of A. B. C.?

Laura. (*Aside.*) My advertisement for work.—Yes, give it to me.

Snorkey. (*Seeing her face.*) If I'd been taking something this morning, I'd say that I'd seen that face in a different sort of place from this.

Laura. Is there anything to pay? Why do you wait?

Snorkey. Nothing, Miss. It's all right. (*Going—and aside.*) But it ain't all right, SNORKEY, old boy! (*Goes out after looking at her, stops at window, and gazes in.*)

Laura. (*Without noticing him, opening letter.*) Yes, an answer to my advertisement. (*Reads.*) *To A. B. C.: "Your advertisement promises that you are a good linguist, and can teach children of any age. I have two daughters for whom I wish to engage your services while on a tour of Europe. Call at seven o'clock, this evening, at No.* 207 *W.* 34*th Street.* ANNERSLEY." Hope at last—a home, and in another land soon. I was sure the clouds would not always be black above me! (*Kisses letter.* SNORKEY *re-entering.*)

Snorkey. Miss, I say, Miss. (LAURA *starts.*)—Sh——

Laura. What do you want?

Snorkey. Only one word—and perhaps it may be of service to you. I'd do anything to serve you.

Laura. And why me?

Snorkey. I'm a blunt fellow, Miss, but I hope my way don't offend. Ain't you the lady that I brought a bouquet to on New Year's night—not here, but in a big house, all bright and rich—and who was so kind to a poor soldier?

Laura. (*Faint and leaning against chair.*) Whoever you may be, promise to tell no one you saw me here.

Snorkey. No fear, Miss! I promise.

Laura. Sacredly!

Snorkey. No need to do more than promise, Miss—I keeps my word. I promised Uncle Sam I'd stick to the flag—though they tore my arm off, and by darnation I stuck. I don't want to tell on you Miss. I want to tell on some one else.

Laura. What do you mean?

Snorkey. They're looking for you.

Laura. Who?

Snorkey. BYKE. (LAURA *utters a loud cry and sinks on chair.*) He's on it day and night. I've got his money in my pocket now, and you've got his letter in your hand this minute.

(LAURA *drops the letter in dismay.*

Laura. This?

Snorkey. Yes, it's his writin'—looks like a woman's, don't it? Lord! the snuff that man's up to, would make BARNUM sneeze his head off. He's kept me in hand, 'cause he thinks I know you, having seen you that once. Every day he reads the advertisements, and picks out a dozen or so and says to me: "SNORKEY, that's like my little pet," and then he sits down and answers them
129 and gets the advertisers to make appointments with him, which he keeps regularly, and regularly comes back cussing at his ill luck. See here Miss, I've a bundle of answers to deliver, as usual, to advertisers. I calls 'em BYKE'S Target Practice, and this time, you see, he's accidentally hit the mark.

Laura. For Heaven's sake do not betray me to him! I've got very little money, I earn it hardly; but take it, take it—and save me. (*Offers money.*)

Snorkey. No, Miss; not a cent of it. Though BYKE is a devil and would kick me hard if he thought I would betray him.

Laura. I don't want you to suffer for my sake, take the money.

Snorkey. No, I stood up to be shot at for thirteen dollars a month, and I can take my chances of a kickin' for nothing. But BYKE ain't the only one Miss, there's another's looking for you.

Laura. (*Her look of joy changing to fear.*) Another! Who?

Snorkey. (*Approaching smilingly and confidential.*) MR. TRAFFORD. (LAURA *turns aside despairingly.*) He's been at me every day for more than six weeks. "SNORKEY" says he, "do you remember that beautiful young lady you brought the bouquet to on New Year's night?" "Well," says I, "Capt'n, the young lady I slightly disremember, but the cakes and wine I got there that night I shall never forget." "Search for that young lady," says he, "and when you find her"——

Laura. No, no, no; not even he must know. Do you hear—not he—not any one. You have served them well; serve me and be silent.

Snorkey. Just as you please, Miss, but I hate to serve you by putting your friends off the track—it don't seem natural—BYKE I don't mind; but the Capt'n wouldn't do you any harm. Just let me give him a bit of a hint. (LAURA *makes an entreating gesture.*) Well I'm mum, but as I've only got one hand, it's hard work to hold my tongue. (*Going.*) Not the least bit of a hint? (LAURA *appealingly and then turns away.*) They say when a woman says no, she means yes! I wonder if I dare tell her that he's not far off. Perhaps I'd better not. But I can tell him. (*Exit* D. F.)

Laura. How shall I ever escape that dreadful man? And RAY searching for me too! Our friends then remember us as well as our enemies. (PEACHBLOSSOM *enters quickly* D. F. *shutting the door behind her, with basket which she places on table* C.)

Peach. O Miss NINA, whatever is into the people? There's a strange man coming down the entry. I heard him asking that red cap fellow about you.

Laura. BYKE! Fasten the door quick, (PEACH *runs to door, it is slightly opened, she pushes it against some one on the other side.*)

Peach. O dear! He's powerful strong, I can't keep it shut. Go away you willin! Oh! (*The door is forced and* RAY *enters.*)

Ray. (*Advancing* C.) LAURA—It is I.

Laura. (R. H.) RAY! (*Shrinks from him.*)

Ray. Dear LAURA! (*He stops as he becomes conscious that* BLOSSOM *with her basket on her arm and her bonnet hanging on her back is staring at him.*) I say, my girl, haven't you some particular business somewhere else to attend to?

Peach. (*Seriously,* L. H.) No, sir; I've swept the sidewalk and gone a marketing, and now I'm in doors and I mean to stay.

Ray. And wouldn't you oblige me by going for a sheet of
130 paper and an envelope? Here's a dollar—try and see how slow you can be.

Peach. (*Firmly.*) You can't sheet of paper me, mister; I'm protecting Miss NINA, and I'm not to be enveloped.

Laura. Go as the gentleman asks you, BLOSSOM.

Peach. Oh! (*Takes money, fixes her bonnet.*) First it's "Keep the man out," now it's "Let him stay in alone with me." But I suppose she's like all of us—it makes a great difference which man it is. (*Exit,* D. F.)

Ray. (*After watching* PEACH *out.*) LAURA, when I approached you, you shrank from me. Why did you so?

Laura. Look around you and find your answer.

Ray. (*Shuddering.*) Pardon me, I did not come here to insult your misery. When I saw you I forgot everything else.

Laura. (R. C.) And now it's time for us to remember everything. I told you to look around that you might understand that in such a place I am no longer LAURA COURTLAND, nor anything I used to be. But I did not ask your pity. There is no misery here.

Ray. Alone, without means, exposed to every rudeness, unprotected, is this not misery for you?

Laura. (*Laughing.*) Oh, it's not so bad as that.

Ray. LAURA, don't trifle with me. You cannot have exchanged everything that made you happy, for this squalid poverty, and not feel it deeply.

Laura. I have not time to feel anything deeply. (*Takes basket up, goes to table, busies herself about preparing dinner.*) I work from sunrise till night, and I sleep so soundly that I have not even dreams to recall the past. Just as you came in I was about to cook our dinner. Only think—lamb chops!

Ray. Lamb chops! It makes me shudder to hear you speak.

Laura. Does it? Then wait till I get the gridiron on the fire, and you'll shiver. And if you want to be transfixed with horror, stop and take dinner.

Ray. I will not hear you mock yourself thus, LAURA. I tell you in this self-banishment you have acted thoughtlessly—you have done wrong.

Laura. Why?

Ray. Because, let the miserable creatures who slandered you say what they might, you had still a home and friends.

Laura. A home! Where the very servants would whisper and

point. Friends who would be ashamed to acknowledge me. You are mistaken. That is neither home nor friendship.

Ray. And you are resolved to surrender the past forever.

Laura. The past has forgotten me in spite of myself.

Ray. Look at me.

Laura. (*Coming down, c.*) Well then, there's one who has not forgotten me, but I desire that he may. You speak to me of bitterness. Your presence, your words, cause me the first pang I have felt since the night I fled unnoticed from my chamber, and began my life anew. Therefore I entreat you to leave me, to forget me.

Ray. LAURA, by the tie that once bound us!——

Laura. (*Going up.*) Yes, *once.* It *is* a long time ago.

Ray. What have I said?—the tie which still——

Laura. (*Sharply turning.*) Mr. TRAFFORD, must I remind
131 you of that night, when all arrayed themselves so pitilessly against me? When a gesture from you might have saved me! And you saw me sink without stretching a finger to the woman who had felt the beating of your heart. No, you made your choice then—the world without me. I make my choice now—the wide, wide, world without you.

Ray. I have been bitterly punished, for we are never so humiliated as when we despise ourselves. But, by the Heaven above us both, I love you LAURA, I have never ceased to love you.

Laura. I thank you. I know how to construe the love which you deny in the face of society, to offer me behind its back.

Ray. Will you drive me mad! I tell you LAURA, your misery, your solitude is as nothing to the anguish I have suffered. The maniac who in his mental darkness, stabs to the heart the friend he loved, never felt in returning reason the remorse my error has earned me. Every day it says to me: "You have been false to the heart that loved you, and you shall account for it to your conscience all your life. You shall find that the bitterest drops in the cup of sorrow, are the tears of the woman you have forsaken." And it is true. O, forgive me—have pity on me.

Laura. (*Moved.*) I forgive you. Yes, and I pity you—and, so good-bye, forever.

Ray. Of course, I am nothing to you now. That is some comfort to me. I have only to be sorry on my own account. But, I come to you on behalf of others.

Laura. Whom?

Ray. My mother and PEARL. They ask for you. For them I have sought you, to urge you to return to them.

Laura. Dear little PEARL.

Ray. Yes, she has been quite ill.

Laura. She has been ill?

Ray. Think of those two hearts which you have caused to suffer and do not drive me from you. It is not only wealth, luxury and refinement which you have surrendered—you have also cast away those greater riches: loving and devoted friends. But they shall persuade you themselves. Yes, I'll go and bring them to you, you cannot resist their entreaties.

Laura. No, no, they must not come here. They must never know where I hide my shame, and you must never reveal it.

Ray. I promise it, if you will go to them with me. Think, they will insist on coming unless you do.

Laura. Poor PEARL! If I go with you, you promise not to detain me—to permit me to come back, and to trouble me and my poor life no more?

Ray. I promise; but I know you will release me from it when you see them. I will get a carriage. So that no one will meet you. Wait for me, I shall not be long. It is agreed?

Laura. (*Smiling.*) Yes, it is agreed.

[*Enter* PEACHBLOSSOM, D. F. *with a sheet of paper, foolscap, and some enormous envelopes.*]

Peach. (L. H.) Here they are.

Ray. (C.) That's a good girl, keep them till I come back. In half an hour, LAURA, be ready. [*Exit* D. F.

132 *Peach.* (*With an air.*) What's he going to do in half an hour?

Laura. He's going to take me away with him for a little while BLOSSOM, and while I'm gone, I wish you to be a good girl, and watch the house, and take care of it till I return.

Peach. I don't believe it. You won't return. (*Crying.*) That's what our SAL said when she went off with her young man, and she never came back at all. You shan't go; I hate him. He shan't take you away.

Laura. BLOSSOM! (*Who is getting ready, putting her hat on, &c.*)

Peach. I don't care. If you go away, I'll go away; I'll bite and scratch him if he comes back. (*Fiercely tearing up the paper and envelopes.*) Let him come back. Let him dare come back.

Laura. BLOSSOM, you're very wicked. Go into the corner this minute and put your apron over your head.

Peach. (*Crying at* LAURA'S *feet.*) O, please, MISS NINA, let me go with you, and I'll be so good and not say a word to any one. Do let me go with you. Let me ask him to let me go with you. (*Figure passes the window.*) Here he is; I see him coming.

Laura. Run! run! open the door. (PEACH *runs to door; throws it open, disclosing* BYKE.) (*Exclamation of horror from* LAURA.)

Byke. (*Advancing.*) Ah, my dear little runaway! Found you at last,—and just going out. How lucky! I wanted you to take a walk with me.

Laura. Instantly leave this place!

Byke. How singular! you are always ordering me out and I am always coming in. We want a change. I will go out and I request you to come with me.

Laura. BLOSSOM, go find an officer. Tell him this wretch is insulting me.

Byke. BLOSSOM? ah,—exactly! Here you, JUDAS! (JUDAS *appears at door, down* L. H.) (PEACH *crosses to* LAURA R.)

Judas. O, Miss, save me!

Byke. (*Throws* PEACH *over to* JUDAS, L.) Take care of that brat. And as for you, daughter,—come with me.

Laura. Daughter!

Byke. Yes; it is time to declare myself. Paternal feeling has been too long smothered in my breast. Come to my arms, my child, my long-estranged child! (*Takes out dirty handkerchief and presses his eyes with pretended feeling.*)

Laura. God! is there no help coming? (*She attempts to escape.* BYKE *seizes her.*)

Byke. What, unfilial girl! You take advantage of a father's weakness, and try to bolt! (*Clutching her by the arm.*) Come, go with me; and cheer my old age. Aint I good, to take you back after all these years?

PICTURE.—*Quick Curtain.*

133 ACT III.

SCENE I.—*The Tombs Police Court. Long high desk, with three seats, across back from* R. *to* L. *on Platform. Railing in front. Railing around* L. H. *with opening* C. *In front of railing, a bench* R. *and* L. H. *Gate in* C. *of railing.*

JUDGE BOWLING *and another Justice seated behind high desk,* C. *with clerk on his* L. H. *Justice is reading paper, with his feet upon desk,* R. H. *Policeman at* R. *and* L., 1, 2, E. POLICEMAN 9-9-9 *at gate* C. *Hard-looking set of men and women on benches,* R. *and* L. *Lawyer* SPLINTER *is talking to* RAFFERDI, *who is in crowd down* R.

(*As the curtain rises noisy buzz is heard.*)

Bow. SMITHERS, keep those people quiet. (9-9-9 *handling people roughly.*) Here—easy, officer; treat those poor people decently. Well, whom have you got there?

9-9-9. (*Going to* 1, E. L. H., *and dragging urchin within railing.*) Pickpocket, your Honor. Caught in the act.

Bow. What's he got to say for himself? Nothing, eh? What's his name?

9-9-9. (*Stooping down to boy as if asking him.*) Says his name is PETER RICH.

Bow. You stand a poor chance, RICH! Take him away. (BOWLING *consults with other Justice, as the boy is taken off* E. R. H.)

Splinter. (*To* RAFFERDI, *who has his monkey and organ.*) So you want to get out, eh? How much money have you got?

Raff. Be jabers! half a dollar in cents is all the money I'm worth in the world.

Splin. Give it to me. I thought you organ fellows were Italians.

Raff. Devil doubt it! Aint I got a monkey?

9-9-9. Here, you; come up here. (*Takes* RAFFERDI *inside the railing.* L. H.)

Bow. Now, then; what's this, officer?

9-9-9. (RAFFERDI *takes stand* R.) Complaint of disturbing the neighborhood.

Bow. What have you got to say for yourself?

Splin. (R. H.) If your Honor please, I appear for this man.

Bow. Well, what have you got to say for him?

Splin. Here is an unfortunate man, your Honor—a native of Sunny Italy. He came to our free and happy country, and being a votary of music, he bought an organ and a monkey, and tried to earn his bread. But the myrmidons of the law were upon him, and the Eagle of Liberty drooped his pinions as RAFFERDI was hurried to his dungeon.

134 *Bow.* RAFFERDI!—You're an Irishman, ain't you? What do you mean by deceiving us?

Raf. Sure I didn't. It's the lawyer chap there. I paid him fifty sints and he's lying out the worth of it.

Bow. You fellows are regular nuisances! I've a great mind to commit you.

Splin. Commit him! If the Court please—reflect—commit him—to prison—what will become of his monkey?

Bow. Well, I'll commit him too.

Splin. You cannot. I defy the Court to find anything in the Statutes authorizing the committal of the monkey.

Bow. Well, we'll leave out the monkey.

Splin. And if the Court please, what is the monkey to do in the wide world, with his natural protector in prison? I appeal to those kindlier feelings in your honor's breast—which must ever temper justice with mercy. This monkey is perhaps an orphan!

Bow. (*Laughing.*) Take them both away, and don't let me catch you here again Mr. RAFFERDI or you'll go to jail.

[*Exit* RAFFERDI 1 E. L. H. SPLINTER *goes down*, RAF. *Exits.*

9-9-9. (*Pulling* SAM *who is drunk out of a crowd.*) Get up here.

Sam. (*Noisily.*) Look yah—don't pull me around.

Bow. Silence there! what's all this noise about?

Sam. Whar's de Court? I want to see de Judge.

Splin. (*Approaching him.*) My colored friend can I assist you?

Sam. Am you a Counsellor-at-law?

Splin. Yes, retain me! How much money have you got?

Sam. I ain't got no money—but I've got a policy ticket. It's bound to draw a prize.

Splin. Got any pawn tickets?

Sam. Ob course. (*Giving him a handful.*)

Bow. Well, what's the charge?

9-9-9. (R. H. C.) Drunk and disorderly.

Bow. Well, my man, what have you to say?

Sam. Dis here gemman represents me.

Splin. We admit, if the Court please, that we were slightly intoxicated, but we claim the privilege, as the equal of the white man.

Bow. (*To Clerk.*) Very good! Commit him for ten days.

Splin. But this is an outrage, your honor.

Bow. (*To Officer.*) Take him off! (*Motioning to* SAM.) (SPLINTER *sits down discomfited,* SAM *very wroth.*)

Sam. What?

Bow. Take him away.

Sam. Look here, judge, hab you read the Civil Right Bill? You can't send dis nigger to prison while dat bill am de law of de land.

Bow. That'll do—remove him.

Sam. I ain't no gipsy, I'm one of de Bureau niggers, I am! Where am de law? Don't touch me, white man! Dis am corruption—dis am 'ficial delinquency.

9-9-9. (*Collars him and carries him off.*)

Sam. Mr. STEVENS! THADDEUS! (*Exit* R. H. 1 E.

Bow. Any more prisoners? (*Noise* L. 1 E.) What noise is that? (*Officer goes out.* BYKE *enters, followed by the officer who escort* LAURA.)

Byke. Where is the judge? O, where is the good, kind judge?

135 *Bow.* Well, my dear sir, what is the matter?

Byke. O, sir, forgive my tears. I'm a broken-hearted man.

Bow. Be calm, my dear sir. Officer, bring this gentleman a chair. [*Officer hands chair* R. C.

Byke. Ah, sir, you are very good to a poor distressed father, whose existence has been made a desert on account of his child.

Bow. Repress your emotion, and tell me what you want.

Byke. I want my child.

Bow. Where is she?

Byke. She is here, sir—here—my darling, my beautiful child, and so unfilial—so unnatural.

Bow. How is this, young lady?

Laura. (*Standing inside railing* L. H.) It is all a lie. He is not my father.

Byke. Not your father? Oh, dear, oh, dear, you will break my heart.

Bow. This needs some explanation. If not his child, who are you?

Laura. I am—I dare not say it. I know not who I am, but I feel that he cannot be my father.

Byke. O, dear—O——

Bow. (*Sharply.*) Silence! (*To* LAURA *sternly.*) You say you don't know who you are. Do you know this man?

Laura. Yes.

Bow. Where, and with whom do you live?

Laura. I have lived alone for four months.

Bow. And with whom did you live before that?

Laura. O, forgive me, if I seem disobedient—but I cannot tell.

Bow. Then I must look to this gentleman for information.

Byke. And I will gladly give it. Yes, sir, I will gladly tell. She was taken from me years ago, when she was but a little child, by rich people who wanted to adopt her. I refused—they paid me—I was poor—I was starving—I forebore to claim her—she was happy, but they turned her forth four months ago into the street. I could not see her suffer—my child—the prop of my declining days. I begged her to come—she refused. My enemies had poisoned my

daughter's mind against *me*, her father. I am still poor. I taught school, but I have saved a little money, only for her.

Bow. How old is she?

Byke. Nineteen.

Bow. (*To* LAURA.) Your father is your legal guardian during your minority, and is entitled to your custody. Why are you so undutiful? Try to correct this.

Byke. Oh, bless you, dear, good judge for those words.

Laura. O, have I no friends, must I go with him?

Bow. Certainly.

Laura. Anything then. Exposure! Disgrace, rather than that.

[*Judges consult. Enter* SNORKEY L. *goes opposite to* LAURA *and signals her.*]

Byke. (*Aside.*) SNORKEY! the devil!

Snorkey. (*Crossing to* LAURA L. C.) Can I help you miss? Only tell me what to do, and if it takes my other arm off, I'll save you.

Laura. Yes, yes, you can help me! (*To Judge.*) Will you let me send a message?

Bow. You may do that.

136 *Laura.* Run to that house—not my house—but the one in which you saw me first. Do you remember it?

Snorkey. Don't I, and the wine and cakes.

Laura. Ask for Miss PEARL. Tell her where I am. Tell her to come instantly. (SNORKEY *going.*) Stay—tell her to bring the ebony box in mother's cabinet. Can you recollect?

Snorkey. Can I what? Gaze at this giant intellect and don't ask me! The ebony box—all right—I'm off.

[*Exit* L.

Bow. It would have been as well, young lady, to have answered frankly at first.

Byke. O, sir! Don't be harsh with her! Don't be harsh with my poor child!

Bow. Your father has a most Christian disposition.

Laura. Sir, I have told you, and I now solemnly repeat it, that this man is no relation of mine. I desire to remain unknown, for I am most unfortunate; but the injustice you are about to commit forces me to reveal myself, though in doing so I shall increase a sorrow already hard to bear. (SPLINTER *talks with* LAURA *aside.*)

Bow. We sit here to do right, according to the facts before us. And let me tell you, young lady, that your obstinate silence has more than convinced us that your father's statement is correct. Further, unless the witnesses you have sent for can directly contradict him, we shall not alter our decision.

Laura. Let it be so. He says he gave me into the care of certain wealthy people when I was a little child.

Byke. I am willing to swear to it.

Laura. (SPLINTER *watching effect of question.*) Then he will be able to describe the clothes in which I was dressed at the time. They were safely kept. I have sent for them.

Byke. Let them be produced—and I will recognize every little

precious garment. (*Aside.*) This is getting ferociously hot for me! Ha! *Re-enter* SNORKEY *with* RAY *hastily* L. 1 E.

Snorkey. (*Excitedly.*) Here's a witness! Here's evidence! 9-9-9 *admonishes him.*

Laura. (RAY *takes her hand through the rail.*) RAY?

Bow. Who is this?

Ray. I am a friend, sir, of this lady.

Byke. He is a dreadful character—a villain who wants to lead my child astray! Don't—please don't let him contaminate her!

Bow. Silence! (*To* RAY.) Can you disprove that this young lady is his daughter.

Ray. His daughter? (*Looks at* LAURA.)

Laura. He knows nothing.

Bow. Let him answer. Come—have you any knowledge of this matter?

Ray. I had been told, sir, that—(LAURA *looks at him.*) No—I know nothing.

Laura. Have you brought the ebony box? It contained the clothes which I wore when——

Ray. I understand; but in my haste, and not knowing your peril I brought nothing. But can you not remember them yourself?

Laura. Perfectly.

Ray. Write then! (*Handing her a memorandum book.* (*To*
137 Bow.) Sir, this lady will hand you a description of those articles which she wore when she was found, thirteen years ago. Then let this scoundrel be questioned—and if he fail to answer, I will accuse him of an attempted abduction.

Bow. That's the way.

Byke. (*Aside.*) It will not be a great effort for me to remember.

Bow. (*Taking the book from* RAY.) Now, sir, I will listen to you. (RAY *and* LAURA *are eager and expectant.*)

BYKE. (*Deliberately.*) A soiled gingham frock, patched and torn. (LAURA *gives a shudder and turns aside.*)

Bow. What kind of shoes and stockings?

Byke. Her feet were bare.

Bow. And the color of her hood?

Byke. Her dear little head was uncovered.

Bow. (*Handing book back.*) He has answered correctly.

Laura. It is useless to struggle more! Heaven alone can help me!

Ray. You can see, sir, that this lady cannot be his daughter. Look at her and at him!

Bow. I only see that he has pretty well proven his case. She must go with him, and let her learn to love him as a daughter should.

Ray. She shall not. I will follow him wherever he goes.

Byke. (*Taking* LAURA'S *hand.*) I appeal to the Court.

Bow. Officer, take charge of that person, until this gentleman is gone.

Byke. (*Coming forward with* LAURA *who is dumb and despairing.*)

My child, try and remember the words of the good judge. "You must learn to love me as a daughter should." (*Leading her towards* R. H.)

Snorkey. (*To* RAY.) Stay here, sir, I'll track him. No one suspects me!

[*Music, Tableau,—Scene closes in.*

LAURA R. H. BYKE R. C. SNORKEY C. RAY L. H.

SCENE II.—EXTERIOR OF THE TOMBS, *with ballads on strings upon the railings. Enter* JUDAS *followed by* PEACHBLOSSOM L. H. 1 E.

Peach. Only tell me where he has taken her, and I'll go with you—indeed I will.

Judas. We don't want you, we wouldn't be bothered with you, she's our game.

Pearl. What are you going to do with her?

Judas. Do! why we'll coin her. Turn her into dollars. We've had it on foot for a long time.

Peach. What! Is she the rich young lady I heard you and BYKE speak of so often before I got away from you?

Judas. (*Savagely.*) Heard me speak of! What did you hear!

Peach. (*Dancing off.*) O, I know! I know more than you suppose. When you used to lock me up in the back cellar for running away, you forgot that doors had key-holes.

Judas. (*Aside.*) This girl must be silenced.

138 *Peach.* What are you muttering about—don't you know how BYKE used to throw you down and trample on you for muttering?

Judas. I'll have you yet, my beauty.

Peach. I think you are a great fool, JUDAS.

Judas. Likely. Likely.

Peach. Why don't you give up Miss NINA to that handsome young gentleman? He'd pay you well for the secret. He'd give his whole fortune for her, I know, I saw it in his face. And he'd treat you better than BYKE does.

Judas. Not yet my chicken; besides, what does he care for her now? Isn't he going to marry the other girl—she's the one will pay when the time comes—but we intend to hold the goods 'till the price is high.

Peach. Then, if you won't, I'll tell all as I knows. I'll tell him all I used to overhear about babies and cradles, and he'll understand it perhaps, if I don't.

Judas. (*Aside.*) Hang her—she'll make mischief. (*Aloud.*) Well, come along with me, my beauty, and I'll talk it over with you.

Peach. Don't touch me, I won't trust you with your hands on me. (JUDAS *makes a dart at her.*) I knew that was your game. But I'll be even with you yet. (*Dancing off tantalizingly before* JUDAS. *Both exit* R. H.)

(*Enter* SNORKEY R. 1 E.)

Snorkey. (*Despondent.*) I'm no more use than a gun without a trigger. I tried to follow BYKE, but he smoked me in a minute. Then I tried to make up with him, but he swore that I went against him in Court, and so he wouldn't have me at no price. Then I ran after the carriage that he got into with the lady, till a damn'd old woman caught me for upsetting her apple stand and bursting up her business. What am I to do now? I'm afraid to go back to the Cap'n, *he* won't have me at any price either, I suppose. (*Gazing at ballads, hand in his pockets—going from one to the other. Enter* BERMUDAS L. 1 E. *with ballads in his hands and preparing to take others off the line as if to shut up shop.*)

Ber. (*After gazing at* SNORKEY.) What are you a doing of—sa-a-y? (*Snorkey takes no notice.*) This here's one of the fellows as steals the bread of the poor man. Reading all the songs for nothin', and got bags of gold at home. Sa-a-y!

Snorkey. Well, youngster, what are you groaning about? Have you got the cholera?

Ber. Ah! What are you doing? Taking the bloom off my songs? You're read them 'ere ballads till they're in rags.

Snorkey. I was looking for the "Prairie Bird."

Ber. Perary Bird! eh? There ain't no perary bird. There's a "Perary Flower."

Snorkey. Now don't go into convulsions. I'll find it. (*Turns to songs.*)

Ber. Sa-a-y—you needn't look no further for that bird! I've found him, and no mistake. He's a big Shanghae with a red comb and no feathers.

Snorkey. He's dropped on me.

Ber. Ain't you a mean cuss, sa-a-y? Why don't you come down with your two cents, and support trade?

Snorkey. But I ain't got two cents. What's a fellow to do if he hasn't got a red?

139 *Ber.* (*Toning down.*) Haint you? Where's your messages?

Snorkey. Havn't had one go to-day.

Ber. Where do you hang out?

Snorkey. Nowhere's.

Ber. My eye—no roost?

Snorkey. No.

Ber. I tell you what, come along with us—we've got a bully place—no rent—no taxes—no nothin.

Snorkey. Where is it?

Ber. Down under the pier!—I discovered it. I was in swimmin' and seed a hole and I went in. Lots of room, just the place for a quiet roost. We has jolly times every night I tell you on the dock; and when it is time to turn in we goes below, and has it as snug as a hotel; come down with us.

Snorkey. I will! These young rascals will help me track that scoundrel yet.

Ber. Now, help me to take in my show windows; it's time to shut up shop.

(*Enter* RAY TRAFFORD, L.)

Ray. If what that crazy girl has told me can be true, LAURA may yet be restored to her friends if not to me, for I have dispelled that dream forever. But that villain must be traced immediately, or he will convey his victim far beyond our reach or rescue.

(SNORKEY *helping to take down songs, sees* TRAFFORD, *who has crossed to* R. H.)

Snorkey. Hollo! Cap'n!

Ray. The man of all I wanted. You tracked him?

Snorkey. They was too much for me, sir—two horses was—but I saw them turn into Greenwich street, near Jay.

Ray. This may give us a clue. I have learned from a girl who knows this fellow, that he has some hiding-place over the river, and owns a boat which is always fastened near the pier where the Boston Steamers are.

Snorkey. Well, Cap'n, if anything's to be done, you'll find me at Pier—what's the number of our pier, SHORTY?

Ber. Pier 30!—Down stairs!

Snorkey. Pier 30. That's my new home, and if you want me, say the word.

Ray. You will help me?

Snorkey. You bet, Cap'n. I was on Columbia's side for four years, and I'll fight for her daughters for the rest of my life, if you say so. If there's any fightin' count me in, Cap'n.

Ray. Thank you, brave fellow. Here take this—no nonsense—take it. Pier 30 is it?

Snorkey. Pier 30. (*Exit* TRAFFORD, R. 1 E.)

Ber. (*Eying money.*) How much, PERARY?

Snorkey. One—two—three—four—four dollars.

Ber. Four dollars! Sa-ay—Don't you want to buy a share in a paying business? I'm looking out for a partner with a cash capital, for the ballad business. Or I tell you what to do. Lay your money on me in a mill. I'm going to be a prize fighter, and get reported in the respectable dailies. "Rattling Mill, 99th round, BERMUDAS the victor, having knocked his antagonist into nowhere's."

Snorkey. Come along, you young imp. I could floor you with my own arm, and then the report would be: "25th round—SNORKEY came up first, while his antagonist showed great signs of distress."

Ber. Say, PERARY, what are you going to do with all that money?

Snorkey. I won't bet it on you, sure.

Ber. I'll tell you what to do, let's go and board at the Metropolitan Hotel for an hour.

Snorkey. What will we do for toothpicks?

Ber. Oh, go along. You can't get anything to eat for four dollars.

(*Exit* SNORKEY, BER. *squaring off* L. 1 E.)

SCENE III.—*Foot of Pier* 30, *North River. Sea cloth down and working—a pier projecting into the river. A large cavity in front. Bow of a vessel at back, and other steamers, vessels and piers in perspective on either side. The flat gives view of Jersey City and the river shipping by starlight. Music of distant serenade heard.*

BYKE *enters sculling a boat,* R. 2d E. *and fastens his boat to the pier* L. H. *Old* JUDAS *is on the pier, smoking pipe, looking down.*

Judas. Have you fixed everything across the river?

Byke. Yes, I have a horse and wagon waiting near the shore to carry her to the farm. Has any one been around here?

Judas. Not a soul. I've been waiting here for an hour. What made you so long?

Byke. I pulled down the river for a spell to throw any spies off the track. It was necessary after what you told me of that girl's threat to blab about the Boston pier.

Judas. Pshaw! she'd never dare.

Byke. Never mind, it's best to be certain. Is the prize safe?

Judas. Yes, she was worn out, and slept when I came away. How her blood tells—she wouldn't shed a tear.

Byke. Bah! if she'd been more of a woman and set up a screaming, we shouldn't have been able to get her at all. Success to all girls of spirit, say I.

Judas. Don't you think it might be worth while to treat with this young spark, TRAFFORD, and hear what he has to offer?

Byke. Satan take him! no. That'll spoil your game about the other girl, PEARL. He was making up to her all right, and if he gets this one back he'll upset the whole game by marrying her. I tell you he's got the old feeling for her, spite of her running away. Now you can judge for yourself, and do as you please.

Judas. Then I do as you do—get her out of the city. When PEARL is married to him we can treat for LAURA's ransom, by threatening them with the real secret.

Byke. Then that's settled. (*Taking out flask.*) Here's the precious infant's health. Do you think she'll go easy, or shall we drug her?

Judas. Just tell her it's to meet her beau and get her ransom, or give her a reason and she'll be as mild as a lamb.

Byke. Ha! let me get hold of her, and I'll answer she goes
141 across, reason or no reason. (BERMUDAS *calls outside* L. H.) There's a noise.

Judas. It's only the market boys coming down for a swim.

Byke. Softly then, come along. [*Music. Exeunt* L.

[*Enter* BER., PEANUTS, *and a couple other boys,* L.

Ber. Say, PEANUTS, go down and see if any of the fellows is come yet. (PEANUTS *scrambles down to hole in front on side of dock; comes out again.*)

Peanuts. There's nobody there.

Snorkey. (*Without.*) Hollo!

Ber. Hollo! That's our new chum. Hollo! follow your front teeth, and you'll get here afore you knows it.

[*Enter* SNORKEY *with more boys,* L.

Snorkey. What a very airy location.

Ber. It's a very convenient hotel. Hot and cold saltwater baths at the very door of your bedrooms, and sometimes when the tide rises we has the bath brought to us in bed—doesn't we, PEANUTS?

Peanuts. That's so.

Snorkey. Come, what do you do before you go to bed?

Ber. We has a swarry. Say, one of you fellows go down and bring up the piany forty. (PEANUTS *goes into hole and gets banjo.*) What'll I give you?

Snorkey. Something lively. (*Music, and dance by boys, ensue,—given according to capacity and talent. At the end of it a general shout of jubilee; when—*

Sergeant of Patrol. (*Outside*). Here, boys! less noise.

Ber. It's ACTON and the police. Let's go to bed. (BER. *and boys get down into hole.*)

Sergeant. (*Entering* L. *in patrol boat.*) If you boys don't make less noise, I'll have to clear you out.

Ber. (*On the pier.*) It's an extra occasion, Mr. ACTON;—we're having a distinguished military guest, and we're entertaining him. (*Boat passes out,* R.) Come along PERARY, let's go to bed. (SNORKEY *is about to descend.*)

(*Enter* RAY TRAFFORD, L. *on pier.*)

Ray. Is that you, SNORKEY?

Snorkey. (*Quickly whispering.*) Here, sir. Anything turned up?

Ray. BYKE was overheard to say he intended crossing the river to-night; he will doubtless use that boat which he keeps by the Boston pier. The river patrol are on the watch for him. But I will meet him before he can embark.

Snorkey. Which Boston pier is it, Cap'n? there are three on this river.

Ray. Three!

Snorkey. Yes; one of them is two slips below. I tell you what, Cap'n; you get the officers, go by the shore way, search all the slips; I'll find a boat about here, and will drop down the river, and keep an eye around generally.

Voice. (*Without,* L. H.) This way, sir.

Ray. That's the patrol calling me. Your idea is a good one. Keep a sharp eye down the stream. [*Exit,* L.

Snorkey. (*Alone.*) Now for my lay.

Ber. (*Popping his head up.*) Say, can't I do nothin? I'm the Fifth-ward Chicken, and if there's any muss, let me have a shy.

Snorkey. No; get in and keep quiet. (BER. *disappears.*) I
142 wonder where I can find a boat. There ought to be plenty tied up about here. My eye! (*Discovering* BYKE's.) Here's one for the wishin'; sculls too. I'm in luck. Say, BERMUDE, whose boat is this?

Ber. Yours, if you like. Tie it loose.

(*Jumps down, enters boat, pushes off towards* R.

Ber. (*Inside.*) Keep your toe out of my ear!

(*Pause.*) [BYKE, LAURA, *and* JUDAS, *enter on pier from* L.

Laura. Is this the place? There is no one here; you have deceived me.

Byke. Well, we have but we won't do so any longer.

Laura. What do you mean?

Byke. (*Drawing pistol.*) Do you see this? It is my dog Trusty. It has a very loud voice and a sharp bite; and if you scream out, I'll try if it can't outscream you. JUDAS, unfasten the boat.

Laura. What are you about to do? You will not murder me?

Byke. No; we only mean to take you to the other shore, where your friends won't think of finding you. Quick, JUDAS.

Judas. The boat's gone.

Byke. Damn you, what do you mean? Where is it? Here; hold her. (JUDAS *clutches* LAURA.) Where the devil is that boat?

Snorkey. (*Reappearing in boat from* R.) Here!

Byke. SNORKEY! We're betrayed. Come. (*Drags* LAURA *towards* L.)

Snorkey. The police are there! Turn, you coward! Don't run from a one-armed man!

Byke. JUDAS, take her! (SNORKEY *strikes at him with oar.* BYKE *takes oar from him and strikes him; he falls in boat. The boys hear the noise, and scramble up at back. The patrol boat appears at* R., *with lights.*)

Snorkey. Help! BERMUDAS!

Ber. Hi! Ninety-ninth round! first blood for BERMUDAS! (*Jumps at* BYKE.)

Byke. (*Flinging* BER. *off.*) JUDAS, toss her over!

Judas throws LAURA *over back of pier.* RAY *enters* L. *Boys all get on pier and surround* BYKE, *fighting him. Officers enter at* L. RAY *leaps into water after* LAURA.)

CURTAIN.

MOONLIGHT ON DURING SCENE.

143 ACT IV.

No carpet.

SCENE I.—*Long Branch. Ground floor of an elegant residence—open windows from floor to ceiling at back—opening upon a balcony or promenade. Perspective of the shore and sea in distance. Doors* R. *and* L. *Sunset.*

As the curtain rises to lively music, from R. *enter* PEARL, MRS. VAN DAM, SUE EARLIE, *and other ladies in summer costume,* DEMILT *and* WINDEL *with them.*

Pearl. And so the distinguished foreigner is in love with me? I thought he looked excessively solemn at the hop last night. Do you know, I can't imagine a more serious spectacle than a Frenchman or an Italian in love. One always imagines them to be sick. (*To* Mrs. V. D.) Do fasten my glove—there's a dear.

Mrs. D. Where's RAY?

Pearl. O, he's somewhere. I never saw such another. Isn't he cheerful? He never smiles, and seldom talks.

Mrs. V. D. But the foreigner does. What an ecstasy he was in over your singing; sing us a verse, won't you, while we're waiting for Ray?

All. It will be delightful—do.

Pearl. Well! [*Song introduced.*

(*Air, When the War is Over, Mary.*)

I.

Now the summer days are fading,
Autumn sends its dreary blast
Moaning through the silent forest
Where the leaves are falling fast.
Soon dread winter will enfold us—
Chilling in its arms of snow,
Flowers that the summer cherished,
Birds that sing, and streams that flow.

II.

Say, shall all things droop and wither,
That are born this Summer day?
Shall the happy love it brought us—
Like the flowers fade away?
No; be still thou flutt'ring bosom—
Seasons change and years glide by,
They may not harm what is immortal—
Darling,—love shall never die!

Pearl. Now, I've sung that to RAY a dozen times, and he never even said it was nice. He hasn't any soul for music; O, dear, what a creature!

Mrs. V. D. Yes, and what a victim you will be with a husband who has $60,000 per annum income.

144 *Pearl.* That's some comfort, isn't it?

Ray. (*Enters* L. H. *bowing to others.*) Going out, PEARL?

Pearl. Yes, we're off to Shrewsbury. Quite a party's going—four carriages—and we mean to stay and ride home by moonlight.

Ray. Couldn't you return a little earlier?

Mrs. V. D. Earlier! Pshaw! What's in you, TRAFFORD. (*The ladies and gents. go up.*)

Ray. (PEARL, C.) You know that LAURA will be quite alone, and she is still suffering.

Pearl. Well, she'll read and read, as she always did, and never miss me.

Ray. But, at least, she ought to have some little attention.

Pearl. Dear, dear, what an unreasonable fellow you are. Isn't she happy now—didn't you save her from drowning, and havn't I been as good to her as I can be—what more do you want?

Ray. I don't like to hear you talk so, PEARL, and remember what she and you were once. And you know that she was something else once—something that you are now to me. And yet how cheerful, how gentle she is. She has lost everything and does not complain.

Pearl. Well, what a sermon! There, I know you're hurt and I'm a fool. But I can't help it. People say she's good-looking, but she's got no heart! I'd give anything for one, but they ain't to be bought.

Ray. Well, don't moan about it, I didn't mean to reprove you.

Pearl. But you do reprove me. I'm sure I havn't been the cause of LAURA's troubles. I didn't tell the big, ugly man to come and take her away, although I was once glad he did.

Ray. PEARL!

Pearl. Because I thought I had gained you by it. (RAY *turns away.*) But now I've got you, I don't seem to make you happy. But I might as well complain that you don't make me happy—but I don't complain, I am satisfied, and I want you to be satisfied. There, *are* you satisfied?

Mrs. V. D. (*Who with others has been promenading up and down the balcony.*) Here are the carriages.

Pearl. I'm coming. Can't you get me my shawl, RAY. (RAY *gets it from chair.*)

Mrs. V. D. And here's your foreign admirer on horseback.

(SUE EARLIE, DEMILT *and* WINDEL, *exit.*)

Pearl. (*Up stage* C.) Bye, bye, RAY. (*Exit.*)

Mrs. V. D. Are you not coming, TRAFFORD?

Ray. I? No!

Mrs. V. D. Do come on horseback, here's a horse ready for you.

Pearl. (*Without.*) RAY! RAY!

Mrs. V. D. PEARL's calling you. Be quick or Count CAROM will be before you, and hand her in the carriage.

Ray. (*Taking his hat slowly.*) O, by all means, let the Count have some amusement.

Mrs. V. D. (*Taking* RAY's *arm.*) You're a perfect icicle.

[*They exit.*

[*Noise of whips and laughter. Plaintive music as* LAURA *enters.* L. *goes to* C. *and gazes out at them.*]

145 *Laura.* Poor PEARL. It is a sad thing to want for happiness, but it is a terrible thing to see another groping about blindly for it when it is almost within the grasp. And yet she can be very happy with him. Her sunny temper, and her joyous face will brighten any home. (*Sits at table* C., *on which are books.*) How happy I feel to be alone with these friends, who are ever ready to talk to me—with no longings for what I may not have—my existence hidden from all, save two in the wide world, and making my joy out of the joy of that innocent child who will soon be his wife.

(PEACHBLOSSOM *appears at back looking in cautiously, grotesquely attired.*)

Peach. If you please.

Laura. (*Aloud.*) Who is there?

Peach. (*Running in window* F.) O, it's Miss NINA! O, I'm so glad; I've had such a hunt for you. Don't ask me nothing yet.

I'm so happy. I've been looking for you so long, and I've had such hard luck. Lord what a tramp—miles on miles.

Laura. Did any one see you come here? How did you find me?

Peach. I asked 'em at the hotel where Mr. TRAFFORD was, and they said at COURTLAND'S, and I asked 'em where COURTLAND'S was, and they said down the shore, and I walked down lookin' at every place till I came here.

Laura. Speak low, BLOSSOM. My existence is a secret, and no one must hear you.

Peach. Well, Miss, I says to SNORKEY—says I——

Laura. Is he with you?

Peach. No, miss, but we are great friends. He wants me to keep house for him some day. I said to him—"I want to find out where Miss NINA'S gone," and so he went to Mr. TRAFFORD'S and found he was come to Long Branch, but never a word could we hear of you.

Laura. And the others—those dreadful people?

Peach. BYKE and old JUDAS? Clean gone! They hasn't been seen since they was took up for throwing you into the water, and let off because no one came to court agin 'em. BERMUDAS says he's seen 'em in BARNUM'S wax-work show, but BERMUDAS is *such* a liar. He brought me up here.

Laura. Brought you up here.

Peach. Yes, he sells papers at STETSON'S; he's got the exclusive trade here, and he has a little wagon and a horse, and goes down to the junction every night to catch the extras from the express train what don't come here. He says he'll give me lots of nice rides if I'll stay here.

Laura. But you must not stay here. You must go back to New York this evening.

Peach. Back! No, I won't.

Laura. BLOSSOM!

Peach. I won't, I won't, I wont! I'll never let you away again. I did it once and you was took away and dragged about and chucked overboard and almost drowned. I won't be any trouble, indeed I won't. I'll hire out at the hotel, and run over when my work is done at night, when nobody can see me, to look up at your window. Don't send me away. You're the only one as ever was good to me.

146 *Laura.* (*Aside.*) It's too dangerous. She certainly would reveal me sooner or later. I must send her back.

Peach. Besides I've got something to tell you. Dreadful! dreadful! about old JUDAS and BYKE—a secret.

Laura. A secret! what in the world are you saying?

Peach. Is it wicked to listen at doors when people talk?

Laura. It is very wicked.

Peach. Well, I suppose that's why I did it. I used to listen to BYKE and JUDAS when they used to talk about a rich lady whom they called Mrs. COURTLAND.

Laura. Ah!

Peach. JUDAS used to be a nurse at Mrs. COURTLAND'S, and was

turned off for stealing. And wasn't she and BYKE going to make money off her! and BYKE was to pretend to be some beautiful lady's father. Then, when they took you, JUDAS says to me: "Did you ever hear of children being changed in their cradles?" and that you wasn't her child, but she was going to make money off the real one at the proper time.

Laura. What do you tell me?

Peach. Oh! I am not crazy. I know a heap, don't I? And I want you to think I'm somebody, and not send me away.

Laura. (*To herself.*) She must speak the truth. And yet if I were to repeat her strange words here, I should be suspected of forging some tale to abuse the ear of society. No! better let it rest as it is. She must go, and I must go too.

Peach. You ain't mad with me?

Laura. No, no; but you must go away from here. Go back to the hotel to your friend—anywhere, and wait for me; I will come to you.

Peach. Is it a promise?

Laura. (*Nervously.*) Yes, go.

Peach. Then I'll go; for I know you always keep your word—you ain't angry, 'cause I came after you? I did it because I loved you—because I wanted to see you put in the right place. Honor bright, you ain't sending me away now? Well, I'll go; good bye!

Exit C.

Laura. (*Animated.*) I must return to the city, no matter what dangers may lurk there. It is dangerous enough to be concealed here with a hundred Argus-eyed women about me every day, but with this girl, detection would be certain. I must go—secretly if I can—openly if I must.

Ray. (*Outside.*) No, I shall not ride again. Put him up. (*Entering.*) LAURA, I knew I should find you here.

Laura. (*Sitting and pretending composure.*) I thought you had gone with PEARL?

Ray. I did go part of the way, but I left the party a mile down the road.

Laura. You and PEARL had no disagreement?

Ray. No—yes; that is, we always have. Our social barometers always stand at "cloudy" and "overcast."

Laura. (*Rising.*) And whose fault is that?

Ray. (*Pettishly.*) Not mine; I know I do all I can—I say all I can—but she—(*Crossing.*)

Laura. But she is to be your wife. RAY—my friend—courtship is the text from which the whole solemn sermon of married life takes its theme. Do not let yours be discontented and unhappy.

147 *Ray.* To be my wife; yes. In a moment of foolishness, dazzled by her airs and teased by her coquettishness, I asked her to be my wife.

Laura. And you repent already?

Ray. (*Taking her hand.*) I lost you, and I was at the mercy of any flirt that chose to give me an inviting look. It was your fault—you know it was! Why did you leave me?

Laura. (*After conflict with her feelings.*) RAY, the greatest happiness I have ever felt, has been the thought that all your affections were forever bestowed upon a virtuous lady, your equal in family, fortune and accomplishments. What a revelation do you make to me now! What is it makes you continually war with your happiness?

Ray. I don't know what it is. I was wrong to accuse you. Forgive me! I have only my own cowardice to blame for my misery. But, PEARL——

Laura. You must not accuse her.

Ray. When you were gone, she seemed to have no thought—no wish—but for my happiness. She constantly invited me to her house, and when I tried to avoid her, met me at every turn. Was she altogether blameless?

Laura. Yes, it was her happiness she sought, and she had a right to seek it.

Ray. Oh! men are the veriest fools on earth; a little attention, a little sympathy, and they are caught—caught by a thing without soul or brains, while some noble woman is forsaken and forgotten.

Laura. (RAY *throws himself into a seat.*) RAY, will you hear me?

Ray. (*Looking at her hopefully.*) Yes, speak to me as you used to speak. Be to me as you used to be.

Laura. (*Smiling sadly.*) I cannot be that to you; but I can speak as the spirit of the LAURA who is dead to you forever.

Ray. Be it as you will.

Laura. (*Standing beside him.*) Let the woman you look upon be wise or vain, beautiful or homely, rich or poor, she has but one thing she can really give or refuse—her heart! Her beauty, her wit, her accomplishments, she may sell to you—but her love is the treasure without money and without price.

Ray. How well I have learned that.

Laura. She only asks in return, that when you look upon her, your eyes shall speak a mute devotion; that when you address her your voice shall be gentle, loving and kind. That you shall not despise her because she cannot understand, all at once, your vigorous thoughts and ambitious designs: for when misfortune and evil have defeated your greatest purposes—her love remains to console you. You look to the trees for strength and grandeur—do not despise the flowers because their fragrance is all they have to give. Remember, love is all a woman has to give; but it is the only earthly thing which God permits us to carry beyond the grave.

Ray. (*Rising.*) You are right. You are always right. I asked PEARL to be my wife, knowing what she was, and I will be just to her. I will do my duty though it break my heart.

Laura. Spoken like a hero.

Ray. But it is to you I owe the new light that guides me; and I will tell her——

Laura. Tell her nothing—never speak of me. And when
148 you see her, say to her it is she, and she alone, whom you consult and to whom you listen.

Ray. And you——

Laura. You will see me no more.

Ray. You will leave me?

Laura. Something of me will always be with you—my parting words—my prayers for your happiness. (*Distant music heard.*)

Ray. (*Falling on his knees.*) O, LAURA, you leave me to despair.

Laura. (C.) No; to the happiness which follows duty well performed. Such happiness as I feel in doing mine.

PICTURE.

Scene closes in. During last of this scene the sun has set and night come on. Stage dark.

SCENE II.—*Woods near Shrewsbury Station.*

(*Enter* BYKE, *shabbily dressed,* L. 1 E.)

Byke. It's getting darker and darker, and I'm like to lose my way. Where the devil is JUDAS? It must be nine o'clock, and she was to be at the bend with the wagon half an hour ago. (*Rumble of wheels heard.*) Humph—at last.

Judas. (*Entering* L.) Is that you, BYKE?

Byke. Who did you suppose it was? I've been tramping about the wet grass for an hour.

Judas. It was a hard job to get the horse and wagon.

Byke. Give me a match. (*Lights pipe and leans against a tree.*) Did you get the bearings of the crib?

Judas. Yes, it is on the shore, well away from the other cottages and hotels.

Byke. That's good. Nothing like peace and quietness. Who's in the house?

Judas. Only the two girls and the servants.

Byke. How many of them?

Judas. Four.

Byke. It'll be mere child's play to go through that house. Have you spied about the swag?

Judas. They have all their diamonds and jewels there; PEARL wears them constantly; they're the talk of the whole place.

Byke. We'll live in luxury off that girl all our lives. She'll settle a handsome thing on us, won't she? when she knows what we know, and pays us to keep dark—if t'other one don't spoil the game.

Judas. Curse her! I could cut her throat.

Byke. O, I'll take care of that.

Judas. You always do things for the best, dear old BYKE!

Byke. Of course I do. What time is it?

Judas. Not ten yet.

Byke. An hour to wait.

Judas. But, BYKE, you won't peach on me before my little pet is married, will you?

Byke. What's the fool about now?

Judas. I can't help trembling; nothing is safe while LAURA is there.

149 *Byke.* I've provided for that. I've had the same idea as you—while she's in the way, and TRAFFORD unmarried, our plans are all smoke, and we might as well be sitting on the hob with a keg of powder in the coals.

Judas. That we might. But what have you thought to do?

Byke. Why, I've thought what an unfortunate creature LAURA is,—robbed of her mother, her home, and her lover; nothing to live for; it would be a mercy to put her out of the way.

Judas. That's it; but how—how—how——

Byke. It's plain she wasn't born to be drowned, or the materials are very handy down here. What made you talk about cutting her throat? It was very wrong! When a thing gets into my head, it sticks there.

Judas. You oughtn't to mind me.

Byke. Make your mind easy on that score.

Judas. (*Alarmed.*) BYKE, I heard some one in the bushes just there. (*Points off* R.)

Byke. (*Nervously and quickly.*) Who? Where? (*Going* R.)

Judas. Where the hedge is broken. I could swear I saw the shadow of a man.

Byke. Stop here. I'll see. [*Off* R.

Judas. (*Solus.*) I begin to shiver. But it must be done or we starve. Why should I tremble? it's the safest job we ever planned. If they discover us, our secret will save us;—we know too much to be sent to jail.

(*Re-enter* BYKE, *slowly.*)

Byke. There are traces, but I can see no one. (*Looking off* R.)

Judas. Suppose we should have been overheard!

Byke. (*Glaring at her.*) Overheard? Bah! no one could understand.

Judas. Come, let us go to the wagon and be off.

Byke. (*Always looking off* R.) Go you, I will follow. Bring it round by the station, and wait for me in the shadows of the trees. I will follow. (JUDAS *goes off* L. BYKE, *after a moment,—still looking* R.,—*buttons up his coat and hides behind wood,* R. H.) Heigho! I must be off.

(*Enter* SNORKEY, *slowly,* R.)

Snorkey. Tracked 'em again! We're the latest fashionable arrivals at Long Branch. "Mr. BYKE and LADY, and Brigadier General SNORKEY, of New York;"—there's and item for the papers! With a horse and wagon, they'll be at the seaside in two hours; but in the train I think I'll beat 'em. Then to find Cap'n TRAFFORD, and give him the wink, and be ready to receive the distinguished visitors with all the honors. Robbery; Burglary; murder:—that's BYKE'S catechism:—"What's to be done when you're hard up? Steal! What's to be done if you're caught at it? Kill!" It's short and easy, and he lives up to it like a good many Christians don't live up to their laws. (*Looking off* L.) They are out of sight. Phew! it's midsummer, but I'm chilled to the bone; something like a piece of ice has been stuck between my shoulders all day, and something like

a black mist is always before me. (BYKE *is behind tree.*) Just like old NETTLY told me he felt, the night before Fredericksburg;—and next day he was past all feeling,—hit with a shell, and knocked into so many pieces, I didn't know which to call my old friend. Well, (*slapping his chest,*) we've all got to go; and if I can save *them*, I'll have some little capital to start the next world on. The next world; perhaps I shan't be the maimed beggar *there* that I am in this. (*Takes out pistol, examines cap; goes off* L, BYKE *gliding after him.*)

SCENE III.—*Railroad Station at Shrewsbury Bend. Up* R. *the Station shed* R. H. *Platform around it, and door at side, window in front. At* L. L. E. *clump of shrubs and tree. The Railroad track runs from* L. 4 E. *to* R. 4 E. *View of Shrewsbury River in perspective. Night. Moonlight. The switch, with a red lantern, and Signal man's coat hanging on it* L. C. *The Signal lamp and post beside it.*

As the scene opens, several packages are lying about the stage, among them a bundle of axes. The Signal man is wheeling in a small barrel from L., *whistling at his work. Enter* LAURA *in walking dress, coming feebly from* L. U. E.

Laura. It is impossible for me to go further. A second time I've fled from home and friends, but now they will never find me. The trains must all have passed, and there are no conveyances till to-morrow. (*She sits at clump* L. U. E.)

Signal. Beg pardon, ma'am, looking for anybody?

Laura. Thank you, no. Are you the man in charge of this station?

Signal. Yes, ma'am.

Laura. When is there another train for New York?

Signal. New York? Not till morning. We've only one more train tonight; that's the down one; it'll be here in about twenty minutes—"Express Train."

Laura. What place is that?

Signal. That? That's the signal station shed. It serves for store-room, depot, baggage-room, and everything.

Laura. Can I stay there tonight?

Signal. There? Well, it's an odd place, and I should think you would hardly like it. Why don't you go to the hotel?

Laura. I have my reasons—urgent ones. It is not because I want money. You shall have this (*producing portmonnaie*) if you let me remain here.

Signal. Well, I've locked up a good many things in there over night, but I never had a young lady for freight before. Besides, ma'm, I don't know anything about you. You know it's odd that you won't go to a decent hotel, and plenty of money in your pocket.

Laura. You refuse me—well—I shall only have to sit here all night.

Signal. Here, in the open air? Why, it would kill you.

Laura. So much the better.

Signal. Excuse me for questions, Miss, but you're a running away from some one, ain't you?

Laura. Yes.

Signal. Well, I'd like to help you. I'm a plain man you know, and I'd like to help you, but there's one thing would go agin' me to assist in. (LAURA *interested.*) I'm on to fifty years of age, 151 and I've many children, some on 'em daughters grown. There's a many temptations for young gals, and sometimes the old man has to put on the brakes a bit, for some young men are wicked enough to persuade the gals to steal out of their father's house in the dead of night, and go to shame and misery. So tell me this—it ain't the old man, and the old man's home you've left, young lady?

Laura. No; you good, honest fellow—no—I have no father.

Signal. Then, by Jerusalem! I'll do for you what I can. Anything but run away from them that have not their interest but yours at heart. Come, you may stay there, but I'll have to lock you in.

Laura. I desire that you should.

Signal. It's for your safety as much as mine. I've got a patent lock on that door that would give a skeleton key the rheumatism to fool with it. You don't mind the baggage. I'll have to put it in with you, hoes, shovels, mowing machines, and what is this—axes. Yes, a bundle of axes. If the Superintendent finds me out, I'll ask him if he was afraid you'd run off with these. (*Laughs.*) So, if you please, I'll first tumble 'em in. (*Puts goods in house,* LAURA *sitting on platform* R. H. *looking at him. When all in, he comes towards her, taking up cheese-box to put it in Station.*) I say, Miss, I ain't curious—but, of course, it's a *young man* you're a going to?

Laura. So far from that, it's a young man I'm running away from.

Signal. (*Dropping box.*) Running away from a young man! Let me shake hands with you. (*Shakes her hand.*) Lord, it does my heart good! At your age, too! (*Seriously.*) I wish you'd come and live down in my neighborhood awhile, among my gals. (*Shaking his head.*) You'd do a power of good. (*Putting box in Station.*)

Laura. I've met an excellent friend. And here at least I can be concealed until tomorrow—then for New York. My heart feels lighter already—it's a good omen.

Signal. Now, Miss, bless your heart, here's your hotel ready. (*Goes to switch and takes coat off, putting it on.*)

Laura. Thanks, my good friend; but not a word to any one—till tomorrow; not even—not even to your girls.

Signal. Not a word, I promise you. If I told my girls, it would be over the whole village before morning. (*She goes in. He locks door.* LAURA *appears at window facing audience.*)

Laura. Lock me in safely.

Signal. Ah! be sure I will. There! (*Tries door.*) Safe as a jail. (*Pulls out watch, and then looking at track with lantern.*) Ten minutes and down she comes. It's all safe this way, my noisy beauty, and you may come as soon as you like. Good night, Miss!

Laura. (*At window.*) Good night.

Signal. Running away from young man, Ha! ha! ha!

(*He goes to track, then looks down* R.—*lights his pipe and is trudging off* R., *when enter* SNORKEY *from* L. U. E.)

Snorkey. Ten minutes before the train comes. I'll wait here for it. (*To signal man who re-enters.*) Hello, I say, the train won't stop here too long, will it?

Signal. Too long? It won't stop here at all.

Snorkey. I must reach the shore to-night. There'll be murder done unless I can prevent it!

Signal. Murder, or no murder, the train can't be stopped.

152 *Snorkey.* It's a lie. By waving the red signal for danger, the engineer must stop, I tell you!

Signal. Do you think I'm a fool! What! disobey orders and lose my place; then what's to become of my family. (*Exit* R. U. E.)

Snorkey. I won't be foiled. I will confiscate some farmer's horse about here, and get there before them somehow. (BYKE *enters at back with loose coil of rope in his hand.*) Then when BYKE arrives in his donkey cart he'll be ready to sit for a picture of surprise. (BYKE *enters* L. U. E. *suddenly throwing the coil over* SNORKEY.)

Byke. Will he!

Snorkey. BYKE!

Byke. Yes, BYKE. Where's that pistol of yours? (*Tightening rope round his arm.*)

Snorkey. In my breast pocket.

Byke. (*Taking it.*) Just what I wanted.

Snorkey. You ain't a going to shoot me?

Byke. No!

Snorkey. Well, I'm obliged to you for that.

Byke. (*Leading him to platform.*) Just sit down a minute, will you?

Snorkey. What for? (LAURA *appears horror-struck at window.*)

Byke. You'll see.

Snorkey. Well, I don't mind if I do take a seat. (*Sits down.* BYKE *coils the rope round his legs.*) Hello! what's this?

Byke. You'll see. (*Picks the helpless* SNORKEY *up.*)

Snorkey. BYKE, what are you going to do?

Byke. Put you to bed. (*Lays him across the R. R. track.*)

Snorkey. BYKE, you don't mean to—My God, you are a villain!

Byke. (*Fastening him to rails.*) I'm going to put you to bed. You won't toss much. In less than ten minutes you'll be sound asleep. There, how do you like it? You'll get down to the Branch before me, will you? You dog me and play the eavesdropper, eh! Now do it if you can. When you hear the thunder under your head and see the lights dancing in your eyes, and feel the iron wheels a foot from your neck, remember BYKE! (*Exit* L. H. E.)

Laura. O, Heavens! he will be murdered before my eyes! How can I aid him?

Snorkey. Who's that?

Laura. It is I. Do you not know my voice?

Snorkey. That I do; but I almost thought I was dead, and it was an angel's. Where are you?

Laura. In the station.

Snorkey. I can't see you, but I can hear you. Listen to me, Miss, for I've got only a few minutes to live.

Laura. (*Shaking door.*) God help me! and I cannot aid you.

Snorkey. Never mind me, Miss. I might as well die now, and here, as at any other time. I'm not afraid. I've seen death in almost every shape, and none of them scare me; but, for the sake of those you love, I would live. Do you hear me?

Laura. Yes! yes!

Snorkey. They are on the way to your cottage—BYKE and JUDAS—to rob and murder.

Laura. (*In agony.*) Oh! I must get out! (*Shakes window bars.*) What shall I do?

Snorkey. Can't you burst the door?

153 *Laura.* It is locked fast.

Snorkey. Is there nothing in there?—no hammer?—no crowbar?

Laura. Nothing! (*Faint steam whistle heard in the distance.*) O, Heavens! The train! (*Paralysed for an instant.*) The axe!!!

Snorkey. Cut the woodwork! Don't mind the lock—cut round it! How my neck tingles! (*A blow at door is heard.*) Courage! (*Another.*) Courage! (*The steam whistle heard again—nearer, and rumble of train on track. Another blow.*) That's a true woman! Courage! (*Noise of locomotive heard—with whistle. A last blow; the door swings open, mutilated—the lock hanging—and* LAURA *appears, axe in hand.*)

Snorkey. Here—quick! (*She runs and unfastens him. The locomotive lights glare on scene.*) Victory! Saved! Hooray! (LAURA *leans exhausted against switch.*) And these are the women who ain't to have a vote!

(*As* LAURA *takes his head from the track, the train of cars rushes past with roar and whistle from* L. *to* R. H.

154 ACT V.

SCENE I.—*An elegant boudoir at* COURTLAND'S *cottage, Long Branch; open window and balcony at back; moonlight exterior; tree overhanging balcony.*

Bed is at U. E. L.; *toilette table* R.; *arm chair* C.; *door* L. 2 E.; *lighted lamp on toilette table; dresses on chair by bed* L. H. *and by window on* R. (*Music.*)

PEARL *is discovered* (*en negligee*) *brushing her hair out at table before mirror.*

Pearl. I don't feel a bit sleepy. What a splendid drive we had! I like that foreigner. What an elegant fellow he is! RAY is nothing to him. I wonder if I'm in love with him. Pshaw! What an idea! I don't believe I could love anybody much. How sweetly he writes!—(*picks up letter and sits on chair* C.) "You were more

lovely than ever tonight; with one more thing you'd be an angel!" Now, that's perfectly splendid: "with one more thing, you'd be an angel—that one thing is love. They tell me Mr. TRAFFORD is your professed admirer. I'm sure he could never be called your lover—for he seems incapable of any passion but Melancholy." It's quite true. RAY does not comprehend me. (*Takes up another letter.*) "PEARL, forgive me if I have been cross and cold. For the future, I will do my duty, as your affianced husband, better." Now, did ever any one hear such talk as that from a lover! Lover!—O, dear! I begin to feel that he can love, but not me. Well, I'd just as soon break—if he'd be the first to speak. How nice and fresh the air is!—(*she turns down lamp.*) It's much nicer here, than going to bed. (*Settles herself in tete-a-tete for a nap. Pause.*)

[*Moonbeams fall on* BYKE, *who appears above the balcony. He gets over the rail and enters.*]

Byke. Safely down! I've made no mistake—no, this is her room. What a figure I am for a lady's chamber. (*Goes to table, picks up delicate lace handkerchief, and wipes his face.*) Phew! Hot! (*Puts handkerchief in his pocket.*) Now for my bearings. (*Taking huge clasp-knife from his pocket.*) There's the bed where she's sleeping like a precious infant, and here—(*Sees* PEARL *in chair and steals round at back, looking down at her.*) It's so dark—I can't recognize the face. It's a wonder she don't feel me in the air and dream of me. If she does she'll wake sure—but it's easy to settle that. (*Takes phial of chloroform from his pocket, saturates the handkerchief he picked up, and applies it.*) So!—now my charmer—we'll have the ear-rings. (*Takes them out.*) What's here? (*Going to table.*) Bracelets—diamonds! (*Going to dresses, and feeling in the pockets.*) Money! That's handy. (*He puts all in a bag, and hands them over balcony.*) Now for
155 the drawers, there's where the treasure must be. Locked? (*Tries them with bunch of keys.*) Patent lock, of course! It amuses me to see people buying patent locks, when there's one key will fit 'em all. (*Produces small crowbar, and just as he is about to force the drawer, a shout is heard, and noise of wagon.*) What's that? (*Jumps, catching at bureau, which falls over.*) Damnation!

Pearl. (*Starting up.*) Who's there? What's that?

Byke. Silence, or I'll kill you!

Pearl. Help! Help!

Byke. (*Running to bureau for knife.*) You will have it my pretty one. (PEARL *runs to door* L.)

Pearl. Save me! Save me! (BYKE *pursues her, the door bursts open and* RAY *and* LAURA *enter.* BYKE *turns and runs to balcony, and confronts* SNORKEY *and* BERMUDAS, *who have clambered over.*)

Laura. Just in time.

Ray. (*Seizing* BYKE.) Scoundrel!

Snorkey. Hold him, Governor. Hold him. (*Assists* RAY *to bind* BYKE *in chair* R. H.)

Ber. Sixty-sixth and last round. The big 'un floored, and BERMUDAS as fresh as a daisy.

Pearl. Dear, dear LAURA, you have saved me.

Ray. Yes, PEARL; from more than you can tell.

Laura. No, no, her saviors are there. (*Pointing to* BER. *and* SNOR.) Had it not been for the one, I should never have learned your danger, and but for the other, we could never have reached you in time.

Snorkey. BERMUDAS and his fourth editions did it. Business enterprise and BERMUDAS' pony express worked the oracle this time.

Ber. The way we galloped! Sa-ay, my pony must have thought the extras was full of lively intelligence.

Pearl. Darling LAURA, you shall never leave us again.

Ray. No! never.

Snorkey. Beg pardon, Cap'n, what are we to do with this here game we've brought down?

Ray. The Magistrates will settle with him.

Snorkey. Come, old fellow!

Byke. One word, I beg. My conduct, I know, has been highly reprehensible. I have acted injudiciously, and have been the occasion of more or less inconvenience to every one here. But I wish to make amends, and therefore I tender you all in this public manner my sincere apologies. I trust this will be entirely satisfactory.

Ray. Villain!

Byke. I have a word to say to you, sir.

Snorkey. Come, that's enough.

Byke. My good fellow, don't interrupt gentlemen who are conversing together. (*To* RAY.) I address you, sir—you design to commit me to the care of the officers of the law?

Ray. Most certainly.

Byke. And you will do your best towards having me incarcerated in the correctional establishments of this country? (RAY *bows.*)

Snorkey. How very genteel!

Byke. Then I have to say if you will, I shall make a public exposure of certain matters connected with a certain young lady.

Laura. Do not think that will deter us from your punishment. I can bear even more than I have—for the sake of justice.

156 *Byke.* Excuse me, but I did not even remotely refer to you.

Laura. To whom, then?

Byke. (*Pointing to* PEARL.) To her.

Ray. Miss COURTLAND?

Byke. O, dear! no, sir. The daughter of old JUDAS—the spurious child placed in *your* cradle, Miss LAURA COURTLAND, when you were abducted from it by your nurse.

Pearl. What does he say?

Byke. That you're a beggar's child—we have the proofs! Deliver me to prison, and I produce them.

Ray. Wretch!

Pearl. Then it's you, dear LAURA, have been wronged—while I——

Laura. You are my sister still—whatever befalls!

Pearl. Oh, I'm so glad it's so! RAY won't want to marry me now—at least, I hope so; for I know he loves you—he always loved you—and you will be happy together.

Ray. PEARL, what are you saying?

Pearl. Don't interrupt me! I mean every word of it. LAURA, I've been very foolish, I know. I ought to have tried to reunite you—but there is time.

Ray. Dear LAURA! Is there, indeed, still time? (*She gives her hand.*)

Byke. Allow me to suggest that a certain proposition I had the honor to submit has not yet been answered.

Ray. Release him. (SNORKEY *undoes his cords.*)

Byke. Thank you—not so rough! Thank you.

Ray. Now, go—but remember, if you ever return to these parts you shall be tried, not only for this burglary, but for the attempt to kill that poor fellow.

Byke. Thank you. Good-bye. (*To* SNORKEY.) Good-bye, my dear friend; overlook our little dispute, and write to me. (*Aside.*) They haven't caught JUDAS, and she shall make them pay handsomely for her silence, yet.

[*Enter* PEACH, L. 1 E.

Peach. O Miss! O, such an accident—old JUDAS!

Laura and *Byke.* Well?

Peach. She was driving along the road away from here—just now, when her horse dashed close to the cliff and tumbled her down all of a heap. They've picked her up, and they tell me she is stone dead.

Byke. (*Aside.*) Dead! And carried her secret with her! All's up. I'll have to emigrate. (*Aloud.*) My friends, pardon my emotion—this melancholy event has made me a widower. I solicit your sympathies in my bereavement. [*Exit* L.

Ber. Go to Hoboken and climb a tree! I guess I'll follow him and see he don't pick up anything on his way out

[*Exit* BER. L. E.

Snorkey. Well, there goes a pretty monument of grief. Ain't he a cool 'un? If I ever sets up an ice cream saloon, I'll have him for head freezer.

Peach. O, Miss LAURA, mayn't I live with you now, and never leave no more?

Laura. Yes, you shall live with me as long as you please.

157 *Snorkey.* That won't be long if I can help it. (PEACH. *blushes.*) Beg pardon. I suppose we'd better be going! The ladies must be tired, Cap'n, at this time of night.

Ray. Yes, it is night! It is night always for me. (*Moving towards door* L.)

Laura. (*Placing one hand on his shoulder, taking his hand.*) But there is a tomorrow. You see it cannot be dark forever.

Pearl. Hope for tomorrow, RAY.

Laura. We shall have cause to bless it, for it will bring the long sought sunlight of our lives.

CURTAIN.

R. SNORKEY. LAURA. RAY. PEARL. PEACHBLOSSOM. L. E.

158 COMPLAINANT'S EXHIBIT No. 1, OF 23D DECEMBER, 1889.

Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.

It is hereby stipulated and agreed that the time in which testimony herein may be taken be and it is hereby extended to and including the 18th day of January, 1890.

Dated N. Y., December 16, 1889.

OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.
A. J. DITTENHOEFER,
Solicitor for Defendants Webster and Brady.
HOWE & HUMMEL,
Solicitors for Defendant Miner.

159 COMPLAINANT'S EXHIBIT No. 2, OF DEC. 23, 1889.

United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
against
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.

Please take notice that testimony herein will be taken before Samuel A. Blatchford, Esquire, one of the examiners of this court, at his office No. 16 Exchange place, New York city, on the 23d day of December, 1889, at 11 o'clock in the forenoon.

Dated December 17, 1889.

Yours, &c.,

OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

To A. J. Dittenhoefer, Esq., solicitor for def'ts Webster and Brady; Howe & Hummel, Esqs., solicitors for def't Miner.

160 COMPLAINANT'S EXHIBIT DALY *v.* PALMER, BILL OF COMPLAINT.

Circuit Court of the United States for the Southern District of New York. In Equity.

To the honorable judges of the circuit court of the United States for the southern district of New York:

Augustin Daly, of the city of New York, and a citizen of the State of New York, and the United States, brings this, his bill of complaint, against Henry D. Palmer, a citizen of the State of New

York, Henry C. Jarrett, a citizen of the State of New York, as defendants.

And thereupon your orator complains and says: That he is by profession a dramatic author, and has been for several years past engaged in the business of composing, writing and producing on the theatrical stage in this city and other cities of the United States, dramatic compositions commonly called plays.

And that the defendants, Henry D. Palmer and Henry C. Jarrett, are the managers of Niblo's Garden, a public place of theatrical amusements in the city of New York, and are copartners in said business, composing the firm of Jarrett & Palmer.

That before the first day of August, 1867, your orator invented, composed and wrote a dramatic composition called "Under the Gaslight; a romantic panorama of the streets and houses of New York, in five acts."

That said dramatic composition and each and all the incidents and scenes therein were the original conception and invention of your orator, and said composition in dialogue, scenery, characters, incidents and dramatic and theatrical effect, was wholly
161 original with your orator and was designed and suited for public representation.

That on the first day of August, 1867, your orator being then a citizen and resident of the United States of America, and being then the author and the sole and exclusive proprietor and owner of the said dramatic composition, and the said composition then never having been printed, published, acted, performed or represented, took out a copyright therefor in the said United States, by depositing a printed copy of the title of said composition in the clerk's office of the district court of the United States for the southern district of New York, in which district your orator then and long before resided, and in all respects complied with the provisions of the existing acts of Congress relating to copyrights, which acts are hereinafter particularly mentioned and received from said clerk, who then and there recorded the said title as required by said acts, a certified record in the form required by such acts, containing the title of said composition, and the paper hereto annexed marked A, is a true copy of such certificate and record and of the record duly made by said clerk in that behalf, which said paper your orator prays may be taken as part of this his bill.

And your orator further shows that subsequently to said last-named date, he caused the said composition to be printed and published, and within three months from the date of such printing and publication, he caused a printed copy of said composition so printed and published to be delivered to and deposited with the clerk of the said district court, and also to be delivered to and deposited in the Library of Congress at Washington, for the use of said Library as required by said acts of Congress.

And your orator gave information of the copyright of said composition being secured to him, by causing to be printed and inserted in the several copies of each and every book and edition of such

book or composition so published and printed on the title
162 page thereof or on the page immediately following, the following words, viz.: "Entered according to act of Congress, in the year 1867, by Augustin Daly, in the clerk's office of the district court of the United States for the southern district of New York," and complied with all provisions of said acts of Congress necessary to secure the benefit of said acts of Congress to your orator.

And your orator shows that in and by the aforesaid proceedings of your orator, he intended to obtain, hold and possess and did thereby obtain, hold and possess, and now holds and possesses by virtue of the act of Congress approved February 3, 1831, being chapter 16 of the Statutes of 1831, and the acts amendatory thereof and supplementary thereto, more especially the act of Congress approved August 18, 1856, being chapter 169 of the Statutes of 1856, not only the sole and exclusive right and liberty to print and publish such dramatic composition and book, but also the sole and exclusive right to act, perform or represent the said dramatic composition or play and to cause it to be acted, performed or represented on any stage or public place during the whole period for which the said copyright was obtained.

And your orator further shows that the said dramatic composition was produced, performed and represented for the first time in any place or any stage, on the 12th day of August, 1867, under his direction and for his benefit at the New York theatre, a public place of theatrical amusement in the city of New York, and was there and thenceforward represented for eight consecutive weeks and met with great favor and success, attracting crowds of persons and being pecuniarily profitable to your orator to a large amount, and gained for your orator wide fame as the author thereof.

That the cause of such success, fame and profit was the originality and extraordinary novel nature of the principal scenes and incidents of said composition, and particularly the scene and
163 incident in the end of the third scene of the fourth act of said composition, commonly called (after being publicly performed) the railroad scene or sensation, in which one of the characters in the said composition is represented as secured by another of the characters and laid helpless upon the rails of a railroad track in such manner and with the presumed intent that the railroad train momentarily expected shall run him down and kill him, and just at the moment when such a fate seems inevitable another of the characters in the composition contrives to reach the intended victim and to drag him from the track as the train rushes in and passes over the spot.

And your orator shows that this incident and scene was entirely novel and unlike any dramatic incident known to have been theretofore represented on any stage or invented by any author before your orator invented and composed the same in his said composition and produced and represented the same as aforesaid.

And said railroad scene or sensation was as soon as produced and represented by your orator, and ever since has been and is now regarded, whenever it has been witnessed, to be one of the most

novel, startling and attractive incidents ever represented on the public stage.

That the playing of the said composition and of said railroad scene or sensation, caused the same to become famous in all parts of the United States, Canada and in England; and the said composition was repeatedly produced and represented by and for the advantage of your orator in many cities and towns of the United States and Canada; and everywhere to the great profit of your orator.

And your orator shows that the chief value of said composition and its popularity depend upon the said railroad scene or sensation contained in it, and upon the representation of said scene in said composition only, and in no other dramatic composition whatever.

164 And the printed book hereto annexed marked "B" is a true copy of the whole of said composition and the said railroad scene is found at pages 42 and 43 of said book, and your orator prays that the said printed book may be taken and regarded as a part of this, his bill.

And your orator further shows that before learning of the attempted wrongs of the defendants hereinafter mentioned, he had made arrangements for the purpose of representing dramatically the said "Under the Gaslight" in the city of New York and other cities and places in the United States during the present autumn, and in the approaching winter and spring; and that he reasonably expected thereby to obtain and realize great gains and returns from said composition, and that in pursuance of such arrangements he did commence to represent said composition at the New York theatre in the city of New York on November 4, 1868, and ever since and still continues there to represent the same and intends to do so for several weeks longer.

And your orator further shows that soon after such production and representation and printing of said composition in the United States, one Dion Boucicault, a dramatic author and actor and theatrical manager, a native and subject of Great Britain, as your orator believes, and residing in England, procured a copy of said composition by some means, and without the knowledge, privity or consent of your orator, prepared therefrom a play which he called "After Dark," in which play said Boucicault, in order to make it attractive and to gain pecuniary profit therefrom, introduced several of the scenes and incidents of your orator's said composition, varying them slightly but following in them the inventions and plan of your orator's said composition in a manner which was intended to differ from it only slightly so as colorably to be a different work when it substantially retained the attractive features of your orator's said composition; and among other scenes containing with only

165 colorable variation, the principal scene of your orator's said composition, to wit: the said railroad scene or sensation, substituting for the surface railroad an underground railroad; for the rescuer of the victim to be killed on the railroad, a man for a woman, and for the railroad station in which the rescuer was

confined, a cellar, and for the breaking down a door to escape and rescue the victim, the breaking down a wall, or the door in a wall; that the said work of the said Boucicault is a palpable imitation of your orator's said railroad scene in "Under the Gaslight," and is plagiarised therefrom and put in said play called "After Dark," by said Boucicault for the purpose of obtaining the pecuniary benefit which might result otherwise to your orator from the representation of his said composition, and that the said imitation and plagiarised copy by said Boucicault has been performed without the consent of your orator in England, with great profit to the said Boucicault and no profit whatever to your orator; and that said play, in which said copy and imitation of your orator's said railroad scene is introduced, was indebted for its success and pecuniary profit to such imitation of said railroad scene.

And your orator further shows that said Boucicault has sent copies of his said play called "After Dark," containing the said copy and imitation and plagiarism of your orator's said railroad scene or sensation to the defendants in the United States for sale and performance for his own profit and several copies of such play containing such copy, imitation or plagiarism of your orator's said railroad scene are now in the possession of the defendants, who are now preparing and intend and have announced their purpose to produce, act, represent and perform at the said Niblo's Garden, in the city of New York, on Monday evening, November 16, 1868, and every night thereafter till further notice, the said play called "After Dark," so copied, imitated and plagiarised as aforesaid from your orator's said play and as the main incident, feature and at-
166 traction thereof, to act, represent and perform publicly on the stage of said Niblo's Garden the aforesaid railroad scene, sensation or incident so invented and copyrighted, composed by your orator as aforesaid in the shape and under the colorable disguise of the said copy or imitation or plagiarism thereof, and to represent and perform said play and said scene without and against the will and consent of your orator, and in direct violation and infringement of your orator's right of representation and performance of his said composition called "Under the Gaslight," and every part thereof, and of his whole copyright therein.

That the said play and said railroad scene or copy, imitation or plagiarism of said railroad scene, are being now prepared and rehearsed at said Niblo's Garden under the charge and direction of the defendants, with a view to the public performance thereof on said November 16th, 1868, and your orator states that the copy, imitation and plagiarism of your orator's said railroad scene, incident or sensation made or arranged by said Boucicault, is by the defendants intended to be performed at said Niblo's Garden as aforesaid.

And your orator shows that the defendant, Henry D. Palmer, is the agent, or by virtue of an agreement with said Boucicault, is about to sell copies of said play called "After Dark," with said plagiarized, imitated or copied scene, to other persons in the United

States, to be publicly represented in violation of your orator's right as foresaid.

And your orator shows that such performance and such sale will lead to the manifest injury of your orator and cause him great pecuniary damage and loss, and will be a gross violation and infringement of the copyright and all the rights conferred upon your author by the several acts of Congress aforesaid, and particularly of the act of August 18, 1856, aforesaid, in respect of the said composition entitled "Under the Gaslight," and the inventions,
167 scenes and incidents therein and of said principal scene, incident or sensation called the railroad scene or sensation.

And your orator further shows that the value of your orator's copyright and right of representation of your orator's said composition in the city of New York is over five thousand dollars, and in all the other cities in the United States is a far greater sum.

And your orator further shows that if said defendants be suffered to represent said copy or imitation of your orator's said railroad scene or sensation by said Boucicault or the railroad scene which defendants intend to represent as aforesaid, your orator, for the reason above set forth, will sustain great and irreparable damage.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogations hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say:

1. Whether your orator, Augustin Daly, did not previous to the 1st day of August, 1867, invent, compose and write a dramatic composition called "Under the Gaslight," of which Exhibit "B" is a copy.

2. Whether the scene and incident in said composition herein, called the railroad scene, wherein one of the characters of the said composition is laid helpless upon a railroad track by another of the characters, with the presumed intention that he shall be run down and killed by the railroad train then momentarily expected, and just as such train is approaching another of the characters, understanding the victim's peril, breaks down the barrier which
168 prevents a rescue and drags the victim from the railroad track just as the train passes over the spot where he had been laid, was not novel and unlike any scene and incident theretofore known in drama.

3. Whether your orator did not on August 1, 1867, deposit a printed copy of the title of said composition in the clerk's office of the district court of the United States for the southern district of New York, where your orator then resided, and within three months after the publication of said composition or book, he did not deposit a printed copy thereof with the said clerk and in the Library of Congress, and in all respects comply with the several acts of Con-

gress in relation to copyright, and has not now, under such acts, copyright in said composition and in said railroad scene.

4. Whether the defendants do not intend, and are not now preparing to represent the said play called "After Dark" in Niblo's Garden theatre, in the city of New York.

5. Whether in such play called "After Dark" there is not a scene or incident to the said railroad scene in the said "Under the Gaslight" with slight variations thereof, and that the defendants state and give a copy of the scene in "After Dark" in which a person is placed upon a railroad track to be run over, and is rescued by another person who has been confined and who escapes from his confinement to effect such rescue.

And that the defendants may be restrained by the injunction of this honorable court from the public performance and representation at the said Niblo's Garden or at any other public place at any time, and from the sale for dramatic representation of the said railroad scene in "After Dark" or of any part, scene or incident imi-
tated, copied or plagiarised from your orator's said composi-
169 tion and more particularly from the representation in any
play or in any shape or manner whatsoever of a railroad scene, incident or sensation, copied, imitated or plagiarised from your orator's said composition and may be restrained from being in any manner as managers directly or indirectly concerned in such representation of said composition or said railroad scene, or any copy or imitation thereof, and from directly or indirectly causing, instigating or authorizing such representation on the part of others, and that the defendants may be decreed to pay to your orator his costs in this suit, and that your orator may have such further or other relief as the nature of his case shall require and as may be agreeable to equity.

May it please your honors to grant your orator not only a writ of injunction as above prayed, but also a preliminary injunction restraining the defendants as above prayed, during the pendency of this cause and until final judgment herein, and also a writ of subpœna to be issued out of and under the seal of this honorable court, directed to the defendants Henry D. Palmer and Henry C. Jarrett, commanding them by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court and then and there to answer the premises. And further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

Note.

At the foot of this, in pursuance of rules 51, 52 and 53 of this court, the defendants are required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5.

AUGUSTIN DALY.

JOSEPH F. DALY,
Solicitor for Complainant.
WILLIAM GRAY, *Of Counsel.*

170 Before me, the subscriber, a commissioner of the circuit court of the United States for the southern district of New York, personally appeared this tenth day of November, 1868, the above-named Augustin Daly, who, being duly sworn according to law, says that of the facts set forth in the foregoing bill of complaint those stated of his own knowledge are true, and those stated as derived from information of others he believes to be true.

Witness my hand and seal this tenth day of November, 1868.

R. E. STILWELL, *U. S. Com.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on the first day of August, anno Domini 1867, Augustin Daly, of the said district, has deposited in this office the title of a book or dramatic composition, the title of which is in the words following, to wit: [SEAL.]

UNDER THE GASLIGHT,

A Romantic Panorama of the Streets and Houses of New York,

BY

AUGUSTIN DALY,

Author of "Leah, the Forsaken," "Griffith Gaunt," "Taming a Butterfly," &c.,

The right whereof he claims as author and proprietor.

In conformity with an act of Congress, entitled "An act to amend the several acts respecting copyrights."

GEO. F. BETTS,
Clerk of the Southern District of New York.

171 COMPLAINANT'S EXHIBIT DALY *v.* PALMER, NOTICE OF MOTION, AFFIDAVITS, AND SUBPŒNA.

The President of the United States of America to Henry D. Palmer and Henry C. Jarrett, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York in the second circuit, in equity, on the first Monday of December, A. D. 1868, wheresoever the said court shall then be, to *to* answer a bill of complaint exhibited against you in the said court by Augustin Daly, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 10th day of November, in the year one thousand eight hundred and sixty-

eight, and of the Independence of the United States of America the ninety-third.

KENNETH G. WHITE, *Clerk.*

JOSEPH F. DALY,
Complainant's Solicitor.

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of December, 1868, or the bill will be taken *pro confesso* against them.

K. G. W., *Clerk.*

I hereby depute Aaron Appleton to execute the within process.
November 10, 1868.
Paid $4.00.

R. MURRAY,
U. S. Marshal.

172 Circuit Court of the United States in and for the District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants.

To the above-named defendants:

You will please take notice that upon the bill of complaint in this cause and exhibits annexed, copies of which are hereto annexed, and upon the annexed affidavits or depositions, the complainant will apply to one of the judges of this court at a circuit court of the United States, to be held at the United States court-room in No. 41 Chambers street, in the city of New York, on the 16th day of November, 1868, at eleven o'clock a. m. on that day, or as soon thereafter as counsel can be heard, for an injunction restraining the defendants and each of them during the pendency of this suit and until final decree herein from the public performance and representation at Niblo's Garden in the city of New York, or at any other public place at any time, of the railroad scene in the play by Dion Boucicault called "After Dark," and of any part, scene or incident, imitated, copied or plagiarised from the complainant's dramatic composition called "Under the Gaslight," set forth in said bill of complaint, and more particularly from the rep-
173 resentation, in any place or in any shape or manner whatsoever, of a railroad scene, incident or sensation, copied, imitated or plagiarised from the said composition as fully described in said bill, and from the representation of the copy or imitation thereof, made by said Boucicault, or by any other person and from being in any manner as manager or otherwise directly or indirectly concerned in such representation of said composition or said railroad scene or any copy or imitation thereof, and from directly or

indirectly causing, instigating or authorizing such representation on the part of others, and for such other or further order or reliefs as to the court shall seem meet.

Dated New York, November 10, 1868.

JOSEPH F. DALY,
Solicitor for Complainant.

Circuit Court of the United States, Held in and for the Second Circuit and Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

Augustin Daly, the above-named complainant, being duly
174 sworn, deposes and says: That he was informed by the defendant Henry D. Palmer that the defendants had received from Dion Boucicault from London, England, a copy of the play called "After Dark," containing the railroad scene described in the bill of complaint in this cause, and that defendants intended to represent the same at Niblo's Garden as stated in said bill; and said Palmer asked deponent's permission to represent the said railroad scene in said play, which deponent refused, and deponent further says that said Palmer has commenced a suit in the supreme court of the State of New York against William B. Freligh, the manager of the Bowery theatre, to restrain the performance at said theatre of the said play called "After Dark" and the said railroad scene in said play, said Palmer claiming the right to the sole performance thereof as the owner of the unpublished manuscript of said Boucicault's said play "After Dark." And deponent says that the railroad scene in said "After Dark" so intended to be represented by said Palmer and so represented at the Bowery theatre was copied, imitated and plagiarised by said Boucicault from the last scene of the fourth act of deponent's composition "Under the Gaslight," set forth in said bill, and is a palpable imitation thereof, and all the allegations of deponent's said bill in that behalf are strictly true; and deponent says that he has been for many years a dramatic author and also the dramatic editor of several newspapers, daily and weekly, in the city of New York, and in the course of his business as such became and is acquainted with the incidents and scenes of all the principal dramatic compositions represented in England and the United States during the past twenty years and long before that time, and that no dramatic composition deponent ever saw, read or heard of has the railroad scene in deponent's "Under the Gaslight," or any scene or incident like it, or suggestive of it, ever been composed or represented. And deponent says that his said composition "Under the Gaslight" and his said railroad
175 scene therein, was the sole invention of deponent and was not suggested by or taken from any dramatic composition or

any book or novel or any source whatever but the imagination of deponent. And deponent says he has in his possession the drama called "Les Bohemiens de Paris" and the drama called "The Scamp of London," from which two dramas, as deponent is informed and believes, said Boucicault claims to have taken his said play of "After Dark," and in neither of said dramas is there any scene or incident which resembles or is in any manner suggestive of the railroad scene in deponent's "Under the Gaslight" and in "After Dark," aforesaid. And deponent says that if defendants be allowed to represent said "After Dark" with said railroad scene on and after November 16, 1868, as aforesaid, the deponent will be greatly damaged and his representations of "Under the Gaslight" will cease to be profitable, because the said defendant's theatre is of great capacity, seating nearly three times as many persons as the New York theatre, and the persons desiring to see the said railroad scene will be diverted from said New York theatre to defendant's theatre.

AUGUSTIN DALY.

Personally appeared Augustin Daly before me this 10th November, 1868, and subscribed the foregoing, and being by me duly sworn did depose and say that the foregoing is true.

R. E. STILWELL,
U. S. Comm'r.

176 Circuit Court of the United States, Second Circuit, Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

John F. Cowan, being duly sworn says, he resides in the city of New York; that he has seen the composition set forth in the bill of complaint herein called "Under the Gaslight," represented several times in the city of New York, and has also seen Boucicault's play called "After Dark," represented at the Bowery theatre in the city of New York, on November 2, 1868; and deponent says that the railroad scene in said play of "After Dark" is the same as described in said bill of complaint, and is a copy or imitation of the railroad scene of "Under the Gaslight," also described in said bill, the only difference between the two scenes being that in "After Dark" the character laid upon the rail track to be killed by the engine and train, is laid upon the said track of an underground railroad; that the person who rescues him is a man, and that the rescuer breaks through a wall to effect such rescue.

JOHN F. COWAN.

Subscribed and sworn before me this 10th day of November, 1868.

R. E. STILWELL,
U. S. Com'r.

177 Circuit Court of the United States, Second Circuit, Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

Benjamin A. Baker, being duly sworn, deposes and says: That he resides in the city of New York, and is stage manager of the New York theatre, and that he has been connected with the theatrical profession as stage manager, author and actor for over twenty-five years; that by reason of his said business he is acquainted with the scenes and incidents of the principal plays represented in England and America during said period, and that he never heard of, saw or read any scence or incident in any play or elsewhere which resembled or is suggestive of the railroad scence in the complainant's play of "Under the Gaslight," and verily believes and knows that the complainant, Augustin Daly, is the original inventor of said scence or incident.

B. A. BAKER.

Subscribed and sworn before me this 10th day of November, 1868.
R. E. STILWELL,
U. S. Com'r, Southern District of N. Y.

178 Circcuit Court of the United States, Second Circuit, Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants. } In Equity.

CITY AND COUNTY OF NEW YORK, *ss:*

James E. Hayes, being duly sworn, says: He resides in the city of New York and is manager of the Olympic theatre in said city, and has been for many years connected with theatrical representations; that he is acquainted with the scenes and incidents in the principal plays represented in England and the United States, and never saw, heard or read of any scene or incident which resembles in any manner whatsoever the scene called the railroad scene in the complainant's play of "Under the Gaslight," and verily believes the said scene to be the original invention of the complainant, Augustin Daly.

JAMES E. HAYES.

Subscribed and sworn before me this 10th day of November, 1868.
R. E. STILWELL,
U. S. Comm'r.

Be it remembered, that on the 18th day of November, 1868, before me personally appeared Aaron Appleton, who being by me duly sworn, did depose and say, that on the tenth day of November, 1868, he served a copy of the subpœna and copy bill of
179 complaint in this cause, and copies of the annexed notice of motion and affidavits on Henry D. Palmer, one of the defendants named in the said subpœna at the Westminster hotel in said city by delivering to and leaving with said defendant personally the said copy subpœna, copy bill of complaint, notice and affidavits, and leaving the said copies with said defendant, and deponent says he knew the person so served to be the said Henry D. Palmer, one of the defendants in this cause.

AARON APPLETON.

Subscribed and sworn to before me this 18th day of November, 1868.

R. E. STILLWELL,
U. S. Commissioner.

I have this 10th day of November, 1868, personally served on Henry D. Palmer a copy of the within writ, at the same time showing him the original.

—— ——, *Marshal.*

COMPLAINANT'S EXHIBIT AFFIDAVIT OF H. D. PALMER.

United States Circuit Court.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry D. Palmer, of said city, being duly sworn, deposes and says: That he is one of the defendants in this suit; that
180 when he began his preparations some time ago for the production of Boucicault's drama of "After Dark" at Niblo's Garden theatre, he called on Mr. Daly, the complainant, and out of courtesy and personal regard which he had long felt for him, he, this deponent told the said Daly of his purchase of the drama "After Dark" from Mr. Boucicault, and of his intention to produce it, together with a certain railroad scene so called, and he then asked Mr. Daly as a matter of courtesy and to maintain good feeling, what he claimed as his rights for the use of such railroad scene, and that if there was any patent as to the motive power and it was used at Niblo's Garden, and was willing to pay him a royalty. That Mr. Daly then said that he claimed the whole scene, to which deponent replied that it was "simply ridiculous, that railroad scene had been done on the stage years ago, before he was born."

And deponent further says that he then was and still is perfectly

well aware that the introduction of a railroad train with its accessories upon a dramatic scene is a very old design, that it had been done with great scenic effect and strong dramatic situations more than ten years ago in London at the Victoria theatre in a play called "The Engineer, or the Life of Stephenson," or some similar title, and that it had been repeatedly done elsewhere, deponent now remembers having seen it at Niblo's Garden about 1859, under the Ravils, and that the idea or conception of producing a dramatic effect by the introduction of a railroad train was not original with Mr. Daly in any of its parts.

And deponent well knew that years before Mr. Daly copyrighted the said drama of "Under the Gaslight" locomotive engines, tenders and passenger cars, with rails laid upon the stage and without rails, with the usual accessories of whistles and bells and signals and signal lights, both in day scenes and night scenes had been used on the stage.

And that deponent further says that the reason why he went to Mr. Daly and asked him as to his rights in the said railroad
181 scene was simply this, that deponent had understood that Mr. Daly had, or claimed to have a patent, or that he had taken out a caveat for a patent for the use of a railroad on the stage, or for the device by which it was worked or propelled across the stage, or for the motive power, and that deponent did not wish to infringe on any rights that he might —; that deponent has caused inquiries to be made and is informed that Mr. Daly has no patent for any railroad scene, nor for any device or mechanism for the working of a railroad on the stage as far as the deponent — informed and believes.

That the railroad used at Niblo's Garden is totally different from that used by Mr. Daly in his drama of "Under the Gaslight" in form, in construction and in motive power, and that the scene, in its bearing and effect is totally different.

And deponent further says, that the defendants are perfectly solvent, and able to respond in damages to any amount that the complainant may be adjudged to be entitled to.

HENRY D. PALMER.

Sworn to before me this 18th day of November, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

182 C. C. U. S., S. D. N. Y.

DALY
vs.
WEBSTER. } In Equity.

COMPLAINANT'S EXHIBIT AFFIDAVITS OF N. B. CLARK AND WM. H. WHALLEY. S. R. B., Examiner.

United States Circuit Court.

AUGUSTIN DALY
vs.
WILLIAM B. FRELIGH and J. E. McDONOUGH.

CITY AND COUNTY OF NEW YORK, *ss:*

N. B. Clark, being duly sworn, deposes and says: That he is the stage manager of William B. Freligh, at the Bowery theatre, in the city of New York. That J. E. McDonough brought the play of "After Dark" with him from London, as deponent is informed and believes; and that said play and the railroad incident or scene therein, was the production, as he is informed and believes, of a dramatic author by name of Dion Boucicault, who resides in England, and was got up and produced by him first in the city of London, in England.

That the incident or railroad scene as written and played by Augustin Daly, the plaintiff herein, is very different from the railroad scene or incident as written by said Boucicault, and as it is played in the Bowery theatre, where it is played according to the scene in "After Dark," written by said Boucicault.

Deponent further says that the scene or incident in Mr. Daly's drama, "Under the Gaslight," is a representation of an open
183 track railroad at Shrewsbury Bend station; the person likely to be run over by the cars is tied and laid across the track and rescued by a woman who is locked in a building near by.

The railroad scene or incident in the play of "After Dark" is a representation of an underground railroad in the city of London, England; the railroad scene in this play is represented by a man being discovered on the track in an insensible state or condition, and is rescued therefrom by a man, who is confined in a cellar and who forces his way from the cellar and rescues him from the threatened danger. And this deponent further says, upon information and belief, that neither of the said railroad scenes is original with either the said Daly or the said Boucicault. That in the year 1851 a play called "The Lonely Man of the Ocean; or, the Night Before the Bridal" was played at the Olympic theater, in London, in which occurs a railroad scene or incident.

In that play a bar of iron is placed across the railroad track for the purpose of throwing the cars from the track and by that means

destroy the hero of the play, the Lonely Man of the Ocean. This deponent further says that the intent in all three of these different railroad scenes is a common intent, to wit: the destruction of the hero or main personage in each play and the intent to be accomplished by means of a railroad and cars. That the play called the "Lonely Man of the Ocean" was dramatized and played some sixteen years prior to the time which the plaintiff claims to have become the author of "Under the Gaslight" in which his said railroad scene or incident appears. And deponent further says that in being played, the railroad scene in the "Lonely Man of the Ocean" has about as much resemblance to the scene in plaintiff's play as the railroad scene in "After Dark" has to plaintiff's railroad scene in the play "Under the Gaslight."

That he has no doubt that if there had been no railroad scene in the play called the "Lonely Man of the Ocean" there would
184 not now be pending a suit nor a motion for injunction in behalf of the plaintiff to protect him and his railroad scene in the play "Under the Gaslight."

N. B. CLARK.

Sworn to before me this 18th day of November, 1868.

F. STUYVESANT,
Notary Public, City of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

William H. Whalley, being duly sworn, says: That he has read the foregoing affidavit of N. B. Clark. That he believes that said affidavit is true in all respects, and deponent further says that he is an actor, has played in both plays and has been an actor for fourteen years.

WM. H. WHALLEY.

Sworn to before me this 18th day of November, 1868.

F. STUYVESANT,
Notary Public, City of New York.

COMPLAINANT'S EXHIBIT AFFIDAVIT OF MEIGHAN.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Thaddeus W. Meighan, of said city, being duly sworn, deposes and says:

I am a practical and professional journalist and writer for the press, also a dramatist. Have been, in the course of twenty-eight years, interested in theatres and management. Have no interest whatever in the case of Daly *vs.* Jarrett and Palmer, and am
185 utterly indifferent on personal grounds as to which party shall succeed in the pending litigation. I have naturally, from the nature of my past and present pursuits and associations,

been induced to give more than ordinary attention to the questions and matters involved in this case, and not because I have any prejudices for or against either of the litigants. Had once a conversation with the late William E. Bentin as to the effects that would be the most popular in a dramatic version of "Dombey and Son." He was an expert in theatricals and usually well acquainted with the history of the stage. I suggested that it would be a poor "effect" to run down Carker (one of the characters in the novel) with a locomotive and train of cars as described by Mr. Dickens. He said it had been done on the stage before, in one or two London plays made from the same book and had proved too troublesome, while it had not added to the value and popularity of the representation. I have always supposed that the railroad scene in "Under the Gaslight" was a variation upon that incident and that the departure from what it is literally described in Dickens' book was incited by an English story which I remember to have read about two years ago, and which I think was copied into several exchange newspapers which came to the office of the Sunday Courier. The title of the story was something like "A Night of Horror" or "An Hour of Peril," but as to that I am not positive. The scene of the story, to the best of my recollection, was located in one of the English counties where two men were employed in a rude and almost uninhabited place to alternately attend a most important "switch" on a leading railroad. The men had been rivals for the affections of a girl long known to both. One she had favored and married, and the rejected "switchman," who was of a vindictive and desperate temper, was suspected, by the new-made wife, of intending a deadly vengeance upon her husband. When her husband's
turn comes to attend the "switch," certain movements of
186 the rejected induce her to think he meditates foul play, and
she hastens to the lonely station, where she arrives to find her husband in a desperate struggle with his enemy, the latter attempting with all his might to prevent the former from setting the switch in the proper position, the motive of the latter being the destruction of the coming train (which is heard rapidly nearing the spot) and the ruin or possibly the death of the man of whom he is jealous. The "switch" is locked. As the train comes nearer and nearer, the struggles progresses with increased violence and ferocity. The girl seizes an iron bar and by almost superhuman effort bursts the bonds by which the "switch" was maintained in its dangerous position and instantaneously as she succeeds in directing its course upon the right track, it thunders by just as the foiled ruffian is thrown upon the track before it. This is the material outline as nearly as I can recall it to memory. It is a common practice for dramatists to adopt incidents like these, that may prove popular and attractive into their works. The author of "Under the Gaslight" is not an exception, as he has in other cases employed magazine and newspaper material for plots and "effects" of plays (instance "A Flash of Lightning" and the "Red Scarf"), and as other parts of "Under the Gaslight" were local stage traditions since the time of the production of Mr. Chanfrau's well-known "Mose" dramas. I

have never doubted (as an expert) that Mr. Daly derived the idea of the railway sensation from "Dombey and Son," and the sketch I have tried to recollect and outline, perhaps did so from memory and without being aware that it was not original. This frequently occurs to writers and composers.

THADDEUS W. MEIGHAN.

Sworn to before me this 20th day of November, 1868.

THOS. B. KINGSLAND,
Notary Public, City and County New York.

187 COMPLAINANT'S EXHIBIT AFFIDAVIT OF LEON VINCENT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
vs.
HENRY D. PALMER and *al.*

I, Leon Vincent, being duly sworn on oath, depose and say: That I am stage manager of Niblo's Garden, in the city and county of New York; that in the play of "After Dark" as performed at said Niblo's Garden theatre, the railroad scene complained of is performed as follows:

It is in act III of the piece "After Dark" in scene first of that act, Gordon Chumley, one of the characters, is rendered insensible by drugs, and Old Tom, another character, is thrown by force into a wine vault. In scene II Old Tom is represented as in the wine vault. To this vault there is a window which opens on the track of the underground Metropolitan railway in London. During the scene, rumbling of cars is heard, lights flash through the window. Old Tom discovers by observation through a door into an adjoining vault, two of the characters, Buttingham and Morris, who carry Chumley between them, break a hole through the wall of an adjacent vault, pass the body of Chumley through it, as he supposes, for concealment in a well or vault. Old Tom then finds an iron
188 bar and resolves to attempt escape by enlarging the aperture in the wall opening on the railway. Then follows scene third, of which the following is a copy from the prompt book, and accurately describes the monologue and action, scenery and set of stage:

"The Metropolitan Railway Tunnel scene in perspective, converging to the stage. Telegraph wires and signal posts, with lamps burning and semaphore levers to work. The circular orifice is seen, R. H., which ventilates the cellar in which Old Tom is incarcerated. The body of Gordon Chumley is seen lying across the rails. The arm of Old Tom is passed through the orifice, then his head.

"Old Tom. 'About four courses of bricks will leave one room to

pass. What is that on the line? There is something surely there.' (A distant telegraph alarm rings. The semaphore levers play and the lamps revolve.) 'Great Heaven! 'tis Gordon! I see his pale, upturned face; he lives! Gordon—I'm here! He does not answer me!' (A whistle is heard and distant train passes.) 'Ah! murderers! I see their plan—they have dragged his insensible body to that place and left him there to be killed by a passing train. Demons! wretches!' (He works madly at the orifice. The bricks fall under his blows. The orifice increases, he tries to struggle through it.) Not yet, not yet! (The alarm rings again, the levers in the front play; the red light burns, and a white light is turned to S. H. tunnel. The wheels of an approaching train are heard.) Oh! heaven! give me strength, down, down, one moment! (A large piece of wall falls in and Old Tom comes with it.) See, it comes! the monster comes! (A loud rumbling and crushing sound is heard. He tries to move Gordon, but seeing the locomotive close on him he flings himself on the body and, clasping it in his arms, rolls over with it forward. A locomotive followed by a train of carriages rushes over the place, and, as it disappears,
189 Old Tom frees himself from Chumley and gazes after the train.)

Act drop falls quick.

LEON JNO. VINCENT.

Sworn to before me this 23d day of November, A. D. 1868.

WM. H. POST,
Notary Public, New York City and County.

COMPLAINANT'S EXHIBIT AFFIDAVITS OF WHITE AND OTHERS.

United States Circuit Court.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles White of the city of New York, being duly sworn, says: That as long since as 1836 or 1837 he saw the scenic representation of a train of cars introduced upon the stage of a minstrel company known as Perham's minstrels of Mozart hall in New York city. The locomotive and train was seen approaching with all the accompaniments of steam whistles and bell-ringing, and terminating with an explosion; that he annexes hereto one of the playbills of such performance, marked No. 1.

And deponent further says that the same effect — by Campbell's minstrels as early as 1858, and a train of cars with locomo-
190 tive introduced with an imitation of signal and bell-ringer, and also terminating with a grand explosion; that he annexes hereto a bill of such performance, marked No. 2.

And deponent further says that as recently as 1866 Hooley's minstrels, at the city of Brooklyn, introduced the same effect of a train of cars upon the stage, and that deponent witnessed such performance, and he annexes hereto a play-bill of such performance, marked No. 3.

CHARLES WHITE.

Subscribed and sworn to before me this 17th day of November, 1868.

SAMUEL A. NOYES,
Notary Public, New York City.

(COPY PLAY-BILL ANNEXED TO CHARLES WHITE'S AFFIDAVIT) No. 1.

PERHAM'S

Great

ETHIOPIAN MINSTREL

AND OPERATIC BURLESQUE TROUPE,

Comprising Fifteen Members.

The Largest Travelling Company in the States.

From 663 Broadway.....New York
Melodion.....Boston

And the principal cities throughout the South and West.

JOSIA PERHAM, Proprietor,
R. C. PERHAM, Treasurer,
} JOHN HOWARTH, LEE MALLORY, } Agents.
H. S. CARTEE.....Director of Amusements.

Change of Programme every Evening.

PROGRAMME—PART FIRST.

1. Overture—Bone Polka (original, H. S. C.).....Full Band
2. Opening Chorus—"The Fairy Queen," from Masaniello Company
191 3. Samuel Johnsing (H. S. C.).....Jones
4. Quartette—"Poor Juno," Solo.....Mortimer
5. The Coon Hunt.....Willis
6. I'll Touch My Harp—Solo and Chorus.....Edwards
7. The Southern Belles (original).....Jones
8. Solo and Chorus, I Wander by the Hutside....Master Hughes
9. I'll Throw Myself Away.....Duley
10. Storm March.....Full Band

PART SECOND—MISCELLANEOUS.

1. Solo, Rock Harmonicon-Thema & Variation.....Edwards

These rough and unfinished blocks of stone, comprising two octaves, are so tuned, and placed upon straw, that the most rapid execution can be performed, producing a quality of tone which, for sweetness, is unequaled.

2. Ballad, "Molly Bawn"..... .....Master Hughes
3. Banjo Solo and Recitative... .....Jones
4. Quintette-Burlesque, a la Rachel and Felix from Wallack's popular extravaganza of "Pocahontas" (in character). Company
5. Chinese Pantomime Dance in Character.....Sexton & Parker
6. Guitar Solo-Thema and variations.....Mortimer

PART THIRD—SOUTHERN NEGRO ECCENTRICITIES.

1. Banjo Trio, and the Mysterious Bag of Potatoes
Willis, Jones, Parker and Hughes
2. Comic Jig, Essence of Old Virginia..... .....Sexton
3. Solo, Pas Styrien with variations and imitation of the Flute, Bagpipes and Harp, followed by the Laughable Scene of the Pantomime Violinist.....Duley & Edwards

FINALE.—Plantation Extravaganza and the Railroad Excursion.

Conductor of the train.....Duley
Baggage master..... .....Willis

Other Characters by the Company.

192 Imitation of the starting and stopping of a locomotive. Under way. Laughable scene of collecting tickets. Approaching a station. All confusion. Hack, sir? Ride up, &c. Off again. Baggage master in a hurry. Checks a black baby, thinking it a carpet bag. Unprecedented smash-up. All owing to the man that tends the switch.

Owing to the extreme length of the programme, the company begs the indulgence of the audience for the non-repetition of pieces.
Front seats reserved for the ladies and families. Tickets 25 cents.
Children half price.
Doors open at 7. To commence at 8 o'clock.

J. T. Chesley, printer, *Vox Populy* office, 21 Central St., Lowell.

United States Circuit Court.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Lingard, of said city, being duly sworn, says: That he is an actor by profession. That in the year 1856, he played a certain part or character of "Cyrus Bloom" in a drama called "The Lonely Man of the Ocean." That in said drama was introduced a scene in which was introduced a railroad train with its track, and a locomotive, tender, passenger coaches. That said train was
193 made to cross the stage running at express speed and appeared to run on a man lying on the track. That a great dramatic effect was produced by said scene, and the drama with the scene introduced in it, was enacted many nights during the season of 1856 at the theatre Royal Hall, England, and that deponent then and there acted the aforesaid part of Cyrus Bloom therein, and that at said period, which is now nearly thirteen years ago, the same dramatic effect was produced, as is now produced by the railroad scene (so called) in the drama of "Under the Gaslight," written by Augustin Daly as is supposed.

W. H. LINGARD.

Subscribed and sworn to before me this 17th day of November, 1868.

WM. H. POST,
Notary Public, 561 *Broadway, New York City and County.*

United States Circuit Court.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Violet Jennie Ryan, of the city of New York, being duly sworn, deposes and says that she is an actress by profession.

That during the theatrical season of 1863 she was engaged at Victoria theatre in the city of London, and then and there
194 acted and performed the part or character of Fannie Moreland in a drama called "George Stephenson," at said theatre.

That in said drama, there was a scene representing a railroad track, which crossed the stage, that upon or between the rails of said track, one of the characters of said drama was placed, that the train was heard approaching and crossing into view at express speed, with an engine, tender and several passenger coaches and crossing the full width of the stage in full view of the audience.

That said train was supposed to pass over the man on the track and disappeared from view at the side, that a strong and highly dramatic situation or sensation was produced at said scene.

And deponent further says that she acted a part in said drama for many nights, at least thirty nights as near as she can now recollect.

VIOLET JENNIE RYAN.

Subscribed and sworn to before me this 17th day of November, 1868.

W. H. POST,
Notary Public, 561 *Broadway.*

195 United States Circuit Court.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

W. Bellville Ryan, of the city of New York, being duly sworn, deposes and says: That he is an actor by profession, and has been for ten years. That he has seen the play of "Under the Gaslight" as performed at the New York theatre, under the direction of the complainant, and remembers perfectly the scene called the "railroad scene" in the said play. And deponent further says that as long ago as five years. to wit, about the 10th of May, 1863, he witnessed the performance of a play called "George Stephenson," at the Victoria theatre in the city of London, England, in which was introduced a scene representing a railroad track crossing the stage, and upon the track, between the rails, one of the characters of the play was placed, and the train was heard approaching and coming into view at express speed, with its engine, tender and passenger coaches, was supposed to pass over the man, and was afterward carried out of sight. That a strong and highly dramatic situation or sensation was so produced. And the deponent further alleges that the said scene and incident were of marked similarity with the scene called the "railroad scene" in "Under the Gaslight" in its effect and dramatic sensation. That deponent further says that he witnessed
196 the said play or drama of "George Stephenson" at the said theatre in London for many nights, at least six nights.

W. BELLVILLE RYAN.

Sworn to before me this 18th day of November, 1868.

SAMUEL A. NOYES,
Notary Public, New York City.

United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
HENRY D. PALMER and HENRY C. JARRETT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nathaniel D. Jones, of the city of Boston and State of Massachusetts, being duly sworn, deposes and says: That he is an actor by profession and has been for more than eight years. That in the year 1850, in the month of September, a local drama was produced at the Boston museum in the said city of Boston, which said drama was called "The Last Dollar," and that said drama continued to be nightly performed and publicly represented on the stage at said theatre for the period of four or five consecutive weeks.

That in said drama, in its third act, is introduced a scene representing an end of the Fitchburg depot or station of the said Fitchburg railroad in Boston, and showing the railroad, the track and the rails as it passed from and to the depot or station, and that a train of cars was passed across the stage running on the said
197 track. That such train represented an engine, tender and two or more passenger coaches. That it was a regular passenger train and moved with considerable rapidity. That as soon as the train had passed from view an alarm was raised and numbers of persons rushed to the scene and picked — the body of a man who was supposed to have been run over by the train.

The audience having been given to understand by the action of the play that one of the characters had thrown another in a helpless condition upon the track, that he might be run over and killed. The scene was a night scene, and deponent further says that he saw the said drama with the said scene performed eight or ten times, and that he is very familiar with the incident and scenic effect, and that deponent's father, Dr. Joseph L. Jones, of Boston, was the author of the play.

And deponent further says that among the actors who played in said drama he remembers the names of the following: William Warren, at present playing in the same theatre; W. H. Smith, at present also playing in the Boston museum, and who was then the stage manager; Louis J. Mestayer, now playing at Wood's museum, in the city of New York, and Miss Adelaide Phillips, at present an opera singer, and J. W. Thurman, now with the Boston theatre, and E. F. Keich, now deceased, who played the part of the character that was supposed to be killed by said railroad train.

And deponent further says that over eight years ago he saw at the Howard Athenæum a train of cars introduced upon the stage, which crossed the stage in full view of the audience. Tha- said theatre was then under the management of either Mr. Barrow or E. L. Davenport.

N. D. JONES.

Subscribed and sworn to before me this 17th day of November, 1868.

SAMUEL A. NOYES,
Notary Public, New York City.

198 COMPLAINANT'S EXHIBIT DALY *vs.* PALMER, ORDER FOR AN INJUNCTION.

At a stated term of the circuit court of the United States held in and for the second circuit, southern district of New York, at the court-rooms in the city of New York, on the seventeenth day of December, 1868.

Present: Hon. Samuel H. Blatchford, judge.

Austin DALY, Complainant,
vs.
HENRY D. PALMER and HENRY C. JARRETT, Defendants.

The motion of the above-named complainant for an injunction during the pendency of this suit as prayed for in the bill of complaint, coming on to be heard at a circuit court of the United States, held at the court-rooms, in the city of New York, on the 25th day of November, 1868; and

On reading and filing the bill of complaint herein, the notice of motion for said injunction, the affidavits of the complainant, James E. Hayes, Benjamin A. Baker, Paul Jrignet, John F. Cowan and John C. Denham, and after hearing William Tracy and Thomas S. Alexander, Esqs., of counsel for complainant, and on reading and filing the affidavits of Henry D. Palmer, Charles White, Leon J. Vincent, William H. Lingard, Violet J. Ryan, W. Bellville
199 Ryan and Nathaniel D. Jones, and after hearing J. W. Clark and William D. Booth, Esq., of counsel for defendants, on motion of Mr. Joseph F. Daly, solicitor for complainant,

It is ordered that an injunction issue in this cause as prayed for in said bill of complaint, restraining the defendants and each of them from the public performance or representation at Niblo's Garden in the city of New York or at any other place in the United States, and from the sale for public performance or representation in the United States of the "railroad scene" in the said play called "After Dark," mentioned in said bill, and of any scene in substance the same as the railroad scene in the complainant's play called "Under the Gaslight" mentioned in said bill or in said play called "After Dark" until the further order of this court.

SAMUEL BLATCHFORD.

COMPLAINANT'S EXHIBIT CERTIFICATE OF DEPOSIT IN CLERK'S OFFICE. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the first day of August, Anno Domini 1867, Augustin Daly of the said district has deposited in this
200 office the title of a book or dramatic composition, the title of which is in the words following, to wit:

UNDER THE GASLIGHT,

A Romantic Panorama of the Streets and Houses of New York,

BY

AUGUSTIN DALY,

Author of "Leah the Forsaken," "Griffith Gaunt," "Taming a Butterfly," the right whereof he claims as author and proprietor, in conformity with an act of Congress, entitled "An act to amend the several acts respecting copyrights."

GEO. F. BETTS,
Clerk of the Southern District of New York.

Work deposited this 1st day of August, 1867.

I, A. R. Spofford, Librarian of Congress, hereby certify that the foregoing is a true copy of the original record of copyright in the district court records on file in my office.

In witness whereof, I have hereto set my hand and affixed the seal of my office this 13th day of December, 1889.

A. R. SPOFFORD,
Librarian of Congress.

201 COMPLAINANT'S EXHIBIT CERTIFICATE OF DEPOSIT, LIBRARIAN OF CONGRESS. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

I hereby certify that on the 25th of September, A. D. 1867, Augustin Daly deposited in this office a copy of a dramatic composition entitled:

"UNDER THE GASLIGHT,"

A Drama in 5 Acts,

BY

A. DALY.

Witness my hand and the seal of my office this 21st day of December, A. D. 1889.

A. R. SPOFFORD,
Librarian of Congress.

202 COMPLAINANT'S EXHIBIT BRADY LETTER OF FEBRUARY 17TH, 1889. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

We carry our own Calcium Lights. | Every Scene Complete for Production.

WEBSTER-BRADY CO.

Presenting H. Rider Haggard's

SHE.

MILWAUKEE, 2, 17, 1889.

GENTLEMEN: I have purchased the drama "After Dark" from Dion Boucicault, and I understand that a certain scene (the railroad tunnel) is considered by Mr. Augustin Daly as an infringement on his railroad scene in "Under the Gaslight." Now, as I have arranged for a New York production of "After Dark" and as I do not care to infringe on Mr. Daly's rights, I address you as his attorneys. Will you kindly inform me just what Mr. Daly's rights are? An immediate answer will confer a favor on, yours

Very respectfully,

WM. A. BRADY,
Webster-Brady Co.

Route:
Minneapolis, Feb. 18, 19, 20.
St. Paul, 21, 22, 23.
Chicago, People's theatre, week Mar. 4.

203 COMPLAINANT'S EXHIBIT SOLICITORS' LETTER OF FEBRUARY 20TH, 1889. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

NEW YORK, 20 *Feb'y*, 1889.

DEAR SIR: We are in receipt of your favor of the 17th instant and in answer thereto we beg to say that Mr. Daly owns the "railroad scene" mentioned and will of course protect his rights to it. Any production without his permission of this is an infringement on such rights.

Very truly yours,

OLIN, RIVES & MONTGOMERY.

Wm. A. Brady, Esq., Webster-Brady Co., St. Paul, Minn.

204 COMPLAINANT'S EXHIBIT BRADY'S LETTER OF FEBRUARY 24, 1889. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

We carry our own calcium lights. | Every scene complete for production.

WEBSTER-BRADY COMPANY.

Presenting H. Rider Haggard's

SHE.

ST. PAUL, 2, 24, 1889.

Olin, Rives & Montgomery.

GENTS: Yours of the 20th to hand. Would say that I do not propose using Mr. Daly's railroad scene, and desire to ascertain just exactly what his rights are, so I can avoid infringing on them in any way. Mr. Daly certainly has not the privilege of all uses of a railroad train on the stage, and as I am at present endeavoring to obtain a patent on a new and original use of a R. R. train, I am desirous of not having my scene conflict with his. Mr. Daly is quite familiar with the present scene in "After Dark," and if he will kindly say in what way that scene infringes on his patent, his rights shall be respected. Trusting you will favor me with an early and definite answer, I remain,

Yours very resp'ly, W. A. BRADY.

People's theatre, Chicago, Ill.

Complainant's Exhibit Photograph

(Copy.) C. C. U. S., S. D. N. Y.

DALY
vs.
WEBSTER.
In Equity.

Complainant's Exhibit Photograph.
S. A. B., Examiner

No 265
Webster
Daly
p 206

203 COMPLAINANT'S EXHIBIT SOLICITORS' LETTER OF FEBRUARY 20TH, 1889. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

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Wm. A. Brady, Esq., Webster-Brady Co., St. Paul, Minn.

204 COMPLAINANT'S EXHIBIT BRADY'S LETTER OF FEBRUARY 24, 1889. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

We carry our own calcium lights. | Every scene complete for production.

WEBSTER-BRADY COMPANY.

Presenting H. Rider Haggard's

SHE.

ST. PAUL, 2, 24, 1889.

Olin, Rives & Montgomery.

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Yours very resp'ly, W. A. BRADY.

People's theatre, Chicago, Ill.

no 265
Wash Sp 206
" 1864

205 SOLICITOR'S LETTER OF MARCH 1, 1889. S. A. B., Examiner.

Circuit Court of United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

Olin, Rives & Montgomery, attorneys and counsellors at law, 32 Nassau street.

NEW YORK, *March* 1, 1889.

DEAR SIR: Your favor of the 24th ult. is duly received. Mr. Daly's rights have been adjudicated in the United States courts. Briefly, he claims that a scene representing any person placed on a railroad track in peril of life from a passing train and rescued therefrom, is an infringement of his rights.

Very truly yours, OLIN, RIVES & MONTGOMERY.

W. A. Brady, Esq., People's theatre, Chicago, Ill.

(Here follows photograph marked page 206.)

207 Extracts taken from

COMPLAINANT'S EXHIBIT PROGRAMME OF MAY, 1889.

PROGRAMME.

Armand Wolf.....Publisher.

THE PEOPLE'S THEATRE.

Mr. H. C. Miner.....Sole Proprietor and Manager.

Week commencing May 20, 1889.

WEBSTER-BRADY COMPANY.

Magnificent production of Dion Boucicault's famous Comedy-Drama,

AFTER DARK.

The production under the direction of Wm. A. Brady.

Cast of Characters.

Old Tom, a boatman formerly known as Frank Dalton, Mr. Wm. A. Brady
Sir George Medhurst.....Mr. George P. Webster
Gordon Chumley.....Mr. J. W. McConnell
Dicey Morris.....Mr. E. L. Walton
Richard Knatchbull.....Mr. Frank Richardson
Poynter, on the force.....Mr. E. J. McCullough
Crumpets, owner of the Night Birds' Roost.....Mr. S. C. Blaine

Area Jack, The Bargee, Jemmy, Josie,	Night Birds	Mr. John Mullery Mr. J. F. Frazer Mr. Will Jackson Mr. L. J. Case
Kitties, a waif		Little Minnie Little
Peter Smith, a waiter		Mr. Frank Hart
Master of Ceremonies		Mr. Harry Little
Bartender		Mr. James Keith
Eliza, Sir George's wife		Miss Laura Biggar
Rose Edgerton, of Medhurst Grange		Miss Esther Williams
Jennie, a maid		Miss Kate Handley
Sal, Lizzie, Jane, Minnie,	Waitresses at The Elysium	Miss Nealie Dozier Miss Wanda Strauss Miss Lillie Wilkins Miss Watrous Kane

208 SYNOPSIS.

Act I, Scene 1—The Central Railroad Station.
Scene 2—Home of Medhurst.
Scene 3—The Silver Gambling Hell.
Act II—London at night, showing the River Thames in the foreground.
Act III, Scene 1—Old Tom's home under the arches.
Scene 2—Medhurst Grange.
Act IV—The Elysium Concert Hall, introducing the Boston Quartette, Transformation Danseuse, Marie Rene, the Irish Comique, Bobby Gaylor, and the Illinois Cyclone, Billy Myers, who will appear in conjunction with his brother Ed., in a grand sparring contest.
Scene 2—The Cellar. Old Tom to the rescue.
Act V—Medhurst Grange.

Commencing Monday, May 20th,

First time in this city of the

WEBSTER-BRADY CO.,

in Dion Boucicault's

AFTER DARK,

A Series of Sensations.

The Great Gambling-house Scene.

London Bridge at Night. Railroad Tunnel Sensation. The Famous Concert Hall Scene.

The Famous Irish Comedian, Bobby Gaylor. "The Illinois Cyclone," Billie Meyer, in a four-round Glove Contest with his brother Ed.

Marie Rene in her national dances and changes.

The Boston Quartette, and a host of others.

209 *Monday, May 20th, '89.*

THE WEBSTER-BRADY CO.

Presenting Dion Boucicault's Spectacular Melodrama,

AFTER DARK.

Boucicault's "After Dark" is to receive a representation of an extensive character at this theatre May 20th. It will be placed on the stage in a remarkably complete and original manner. The famous scene-painter, Harley Merry, who participated in the first production of this play in London, has been working on scenes for the past two months and promises to produce a series of stage pictures far out of the ordinary.

Among which may be mentioned a bird's-eye view of London from the famous Thames Embankment, Silver Gambling Hell, the Underground Railroad Tunnel. A miracle in natural realism. The London Music Hall.

Introducing

BILLIE MEYERS,

the boy from Streator, Illinois, who fought 69 rounds with

JACK MCAULIFFE,

terminating in a draw. Will spar four rounds with his brother Ed.

The famous Irishman
BOBBY GAYLOR.

Parisian change Danseuse
MARIE RENE.

THE BOSTON QUARTETTE.

210 Extracts taken from

COMPLAINANT'S EXHIBIT PROGRAMME OF DECEMBER, 1889.

GRAND OPERA HOUSE.

PROGRAMME.

Lessee & manager.....Mr. T. Henry French

Commencing Monday, Dec. 16th, '89.

WILLIAM A. BRADY'S

Magnificent Production of Dion Boucicault's Famous Melodrama,

AFTER DARK.

Cast of Characters.

Old Tom, a boatman formerly known as Frank Dalton, Mr. Wm. A. Brady
Gordon Chumley, Capt. in the Light Dragoons, in love with Rose, Mr. J. W. McConnell
Sir Geo. Medhurst, under the assumed name of Hayward, Mr. Stanislaus Strange
Dicey Morris, Proprietor of Silver Gambling Hell and Elysium Concert Hall.....Mr. E. L. Walton
Richard Knatchbull, alias Chandos Bellingham, a man about town..... Mr. Frank Richardson
Poynter, on the force.....Mr. Harry McDargh
Crumpets, owner of Night Birds' Rest.....Mr. Harry Morton

Area Jack,	Night Birds.....	Mr. John Mullery
The Bargee,		Mr. J. F. Frazer
Jemmy,		Mr. Will Jackson
Josie,		Mr. L. J. Case

Kittie, a waif..... Little Minnie Little
Peter Smith, a waiter.....Mr. Frank Hart
Master of Ceremonies.....Mr. Harry Little
Bartender.....Mr. James Keith
Eliza, Sir George's wife.....Miss Laura Biggar
Rose Edgerton of Medhurst Grange.....Miss Lilian Lee
Jennie, a maid.....Miss Kate Handley

Sal,	Waitresses at the Elysium.....	Miss Nellie Dozier
Lizzie,		Miss Wanda Strauss
Jane,		Miss Lizzie Wilkins
Minnie,		Miss Watrous Kane

Hackmen, Waiters, Policemen, Roughs and Waitressess.

211 GRAND OPERA HOUSE.

Programme—Continued.

SYNOPSIS.

Act I, Scene 1—The Central Railroad Station.
Scene 2—Home of Medhurst.
Scene 3—The Silver Gambling Hell.
Act II—London at night, showing the River Thames in the foreground.
Act III, Scene 1—Old Tom's home under the arches.
Scene 2—Medhurst Grange.
Act IV, Scene 1—The Elysium Concert Hall. Introducing the scientific exponents of the fistic art.

C. C. U. S. S. D. N. Y.
Daly
Webster Vs. } In Equity.
COMPLAINANTS EXHIBIT Book
No 265 Library of S. A. B
Congress Examined

UNDER THE GASLIGHT;

A TOTALLY ORIGINAL AND PICTURESQUE

DRAMA OF LIFE AND LOVE IN THESE TIMES,

IN FIVE ACTS.

BY AUGUSTIN DALY,

AUTHOR OF "LEAH THE FORSAKEN," "GRIFFITH GAUNT," "TAMING A BUTTERFLY," ETC., ETC.

AS ORIGINALLY PLAYED AT THE NEW YORK THEATER IN THE MONTHS OF AUGUST, SEPTEMBER AND OCTOBER, 1867.

No 265 } p. 213
Webster vs Daly

NEW YORK;
PRINTED FOR THE AUTHOR.

1867.

Printed on inside of covers is following notice:
Entered according to Act of Congress in the year 1867 by
Augustin Daly
In the Clerk's office of the District Court of the United States for the Southern District of New York.

KELLY AND MURPHY
in a realistic set-to.

BOBBY GAYLOR,
The Great Irish Comique—The Irishman you meet every day.

Scene 2—The Cellar.
Scene 3—The Railroad Tunnel. Old Tom to the rescue.

NOTE.—Between the fourth and fifth acts a short intermission. The last act occupies only six minutes.

Act V—Medhurst Grange.

The entire production under the direction of
WILLIAM A. BRADY.

212 COMPLAINANT'S EXHIBIT LETTER FROM LIBRARIAN OF CONGRESS. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

WASHINGTON, D. C., *Jan.* 2, 1890.

Messrs. Olin, Rives & Montgomery, New York.

GENTLEMEN: In response to your request that I certify for you a copy of the drama "Under the Gaslight," by Augustin Daly, I have to say that I only furnish certified copies of records. I accordingly cannot comply with your request.

Very resp'y,

A. R. SPOFFORD,
Librarian of Congress.

(Here follows title page of "Under the Gaslight," marked p. 213.)

214 COMPLAINANT'S EXHIBIT BOOK, LIBRARY OF CONGRESS.
S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

ACT IV, SCENE III.

Railroad station at Shrewsbury Bend. Up R. the station, shed R. H. Platform around it and door at side, window in front. At L. L. E. clump of shrubs and tree. The railroad track runs from L. 4 E. to R. 4 E. View of Shrewsbury river in perspective. Night, moonlight. The switch, with a red lantern and signal man's coat hanging on it, L. C. The signal lamp and post beside it.

As the scene opens, several packages are lying about the stage, among them a bundle of axes. The signal man is wheeling in a small barrel from L., whistling at his work. (Enter Laura in walking dress, coming feebly from L. U. E.)

LAURA. It is impossible for me to go further. A second time I've fled from home and friends, but now they will never find me. The trains must all have passed, and there are no conveyances till to-morrow. (She sits at clump L. U. E.)

SIGNAL. Beg pardon, ma'am; looking for anybody?

LAURA. Thank you, no. Are you the man in charge of this station?

SIGNAL. Yes, ma'am.

LAURA. When is there another train for New York?

215 SIGNAL. New York? Not till morning. We've only one more train tonight; that's the down one; it'll be here in about twenty minutes—"express train."

LAURA. What place is that?

SIGNAL. That? That's the signal-station shed. It serves for store-room, depot, baggage-room, and everything.

LAURA. Can I stay there tonight?

SIGNAL. There? Well, it's an odd place, and I should think you would hardly like it. Why don't you go to the hotel?

LAURA. I have my reasons—urgent ones. It is not because I want money. You shall have this (producing port-monnaie) if you let me remain here.

SIGNAL. Well, I've locked up a good many things in there over night, but I never had a young lady for freight before. Besides, ma'am, I don't know anything about you. You know it's odd that you won't go to a decent hotel, and plenty of money in your pocket.

LAURA. You refuse me—well, I shall only have to sit here all night.

SIGNAL. Here, in the open air? Why it would kill you.

LAURA. So much the better.

SIGNAL. Excuse me for questions, Miss, but you're a running away from some one, ain't you?

LAURA. Yes.

SIGNAL. Well, I'd like to help you. I'm a plain man, you know, and I'd like to help you, but there's one thing it would go agin' me to assist in. (Laura interested.) I'm on to fifty years of age, and I've many children, some of 'em daughters grown. There's a many temptations for young gals, and sometimes the old man has to put on the brakes a bit, for some young men are wicked enough to persuade the gals to steal out of their father's house in the dead of night, and go to shame and misery. So tell me this—it ain't the old man, and the old man's home you've left, young lady?

216 LAURA. No, you good, honest fellow; no, I have no father.

SIGNAL. Then, by Jerusalem! I'll do for you what I can. Anything but run away from them, that have not their interest, but yours, at heart. Come, you may stay there, but I'll have to lock you in.

LAURA. I desire that you should.

SIGNAL. It's for your safety as much as mine. I've got a patent lock on that door that would give a skeleton key the rheumatism to fool with it. You don't mind the baggage. I'll have to put it in with you, hoes, shovels, mowing machines and what's this—axes. Yes a bundle of axes. If the superintendent finds me out, I'll ask him if he was afraid you'd run off with these. (Laughs.) So if you please I'll first tumble 'em in. (Puts goods in house, Laura sitting on platform R. H. looking at him. When all in, he comes towards her, taking up cheese-box to put it in station.) I say Miss, I ain't curious—but of course it's a young man you're going to?

LAURA. So far from that, it's a young man I am running away from.

SIGNAL. (Dropping box.) Running away from a young man! Let me shake hands with you. (Shakes her hand.) Lord, it does my heart good! At your age too! (Seriously.) I wish you'd come and live down in my neighborhood a while, among my gals. (Shaking his head.) You'd do a power of good. (Putting box in station.)

LAURA. I've met an excellent friend. And here at least I can be concealed until tomorrow; then for New York. My heart feels lighter already—it's a good omen.

SIGNAL. Now, Miss, bless your heart, here's your hotel ready.

(Goes to switch and takes coat off, putting it on.)

LAURA. Thanks, my good friend; but not a word to any one—till tomorrow; not even—not even to your girls.

217 SIGNAL. Not a word, I promise you. If I told my girls it would be over the whole village before morning.

(She goes in. He locks door. Laura appears at window facing audience.)

LAURA. Lock me in safely.

SIGNAL. Ah! be sure I will. There! (Tries door.) Safe as a jail. (Pulls out watch, and then looking at track with lantern.) Ten minutes and down she comes. It's all safe this way, my noisy beauty, and you may come as soon as you like. Good night, Miss!

LAURA. (At window.) Good night.

SIGNAL. Running away from a young man, ha! ha! ha!

(He goes to track, then looks down R.—lights his pipe and is trudging off R., when enter Snorkey from L. U. E.)

SNORKEY. Ten minutes before the train comes. I'll wait here for it. (To signal man who re-enters.) Holle, I say, the train won't stop here too long, will it?

SIGNAL. Too long? It won't stop here at all.

SNORKEY. I must reach the shore tonight. There'll be murder done, unless I can prevent it.

SIGNAL. Murder or no murder, the train can't be stopped.

SNORKEY. It's a lie. By waving the red signal for danger, the engineer must stop, I tell you!

SIGNAL. Do you think I'm a fool? What? Disobey orders and lose my place; then what's to become of my family? (Exit R. U. E.)

SNORKEY. I won't be foiled. I will confiscate some farmer's horse about here, and get there before them somehow. (Byke enters at back with loose coil of rope in his hand.) Then when Byke arrives in his donkey cart he'll be ready to sit for a picture of surprise. (Byke enters L. U. E. suddenly throwing the coil over Snorkey.)

BYKE. Will he?

SNORKEY. Byke?

218 BYKE. Yes, Byke. Where's that pistol of yours? (Tightning rope round his arm.)

SNORKEY. In my breast pocket.

BYKE. (Taking it.) Just what I wanted.

SNORKEY. You ain't a going to shoot me?

BYKE. No.

SNORKEY. Well, I'm obliged to you for that.

BYKE. (Leading him to platform.) Just sit down a minute will you?

SNORKEY. What for? (Laura appears horror-struck at window.)

BYKE. You'll sell.

SNORKEY. Well, I don't mind if I do take a seat. (Sits down. Byke coils the rope round his legs.) Hello! What's this?

BYKE. You'll see. (Picks the helpless Snorkey up.)

SNORKEY. Byke, what are you going to do?

BYKE. Put you to bed. (Lays him across the R. R. track.)

SNORKEY. Byke, you don't mean to—— My God, you are a villain!

BYKE. (Fastening him to rails.) I'm going to put you to bed. You won't toss much. In less than ten minutes you'll be sound asleep. There, how do you like it? You'll get down to the Branch

before me, will you? You dog me and play the eavesdropper, eh? Now, do it if you can. When you hear the thunder under your head, and see the lights dancing in your eyes and feel the iron wheels a foot from your neck, remember Byke! (Exit L. H. E.)

LAURA. O, Heavens! he will be murdered before my eyes! How can I aid him?

SNORKEY. Who's that?

LAURA. It is I. Do you not know my voice?

SNORKEY. That I do, but I almost thought I was dead, and it was an angel's. Where are you?

LAURA. In the station.

SNORKEY. I can't see you, but I can hear you. Listen to me, Miss, for I've got only a few minutes to live.

219 LAURA. (Shaking door.) God help me! and I cannot aid you.

SNORKEY. Never mind me, Miss. I might as well die now, and here, as at any other time. I'm not afraid. I've seen death in almost every shape, and none of them scare me; but, for the sake of those you love I would live. Do you hear me?

LAURA. Yes! yes!

SNORKEY. They are on the way to your cottage—Byke and Judas—to rob and murder!

LAURA. (In agony.) O, I must get out! (Shakes window bars.) What shall I do?

SNORKEY. Can't you burst the door?

LAURA. It is locked fast.

SNORKEY. Is there nothing in there—no hammer—no crowbar?

LAURA. Nothing! (Faint steam whistle heard in the distance. O, Heavens! The train! (Paralyzed for an instant.) The axe!!!

SNORKEY. Cut the woodwork! Don't mind the lock—cut around it! How my neck tingles! (A blow at door is heard.) Courage! (another) Courage! (The steam whistle heard again—nearer and rumble of train on track. Another blow.) That's a true woman! Courage! (Noise of locomotive heard—with whistle. A last blow; the door swings open, mutilated—the lock hanging and Laura appears, axe in hand.)

SNORKEY. Here—quick! (She runs and unfastens him. The locomotive lights glare on scene.) Victory! Saved! Hooray! (Laura leans exhausted against switch.) And these are the women who ain't to have a vote.

(As Laura takes his head from the track, the train of cars rushes past with roar and whistle from L. to R. H.)

220 COMPLAINANT'S EXHIBIT NOTICE OF EXAMINATION ON MARCH 13, 1891. S. A. B., Examiner.,

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and Others.

Please take notice that the complainant herein will proceed to take testimony in this case in accordance with the rules and statutes in such cases provided, before Samuel A. Blatchford, Esq., an examiner of this court, at his office, No. 16 Exchange place, in the city of New York, on the 13th day of March, 1891, at 2 o'clock in the afternoon.

You are notified to attend and cross-examine any witnesses produced.

221 The examination will be adjourned from day to day, and to such time and place as may be required without further notice.

Dated N. Y., March 3, 1891.

Yours, &c., OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

To A. J. Dittenhoefer, Esq., solicitor for def'ts Webster and Brady; Messrs. Howe & Hummel, solicitors for def't Miner.

COMPLAINANT'S EXHIBIT NOTICE OF FURTHER EXAMINATION. S. A. B., Examiner.

Circuit Court of the United States, Southern District of New York.

DALY
vs.
WEBSTER. } In Equity.

U. S. Circuit Court, Southern District of New York.

AUGUSTIN DALY
against
GEORGE P. WEBSTER and Others.

Please take notice that we shall continue the examination
222 begun before Samuel A. Blatchford, Esq., commissioner, at his office, No. 16 Exchange place, in the city of New York, on the 13th day of March, 1891, and on that day adjourned to a

date not fixed, on the 7th day of April, 1891, at the same place, at 10 o'clock in the forenoon, at which time and place you are notified to attend and cross-examine said Daly.

Dated New York, 3d April, 1891.

Yours, &c., OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant, 32 Nassau St., N. Y. City.

To A. J. Dittenhoefer, Esq., 96 Broadway, N. Y. city, solicitor for def'ts Brady and Webster.

223 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER.

The answer of George P. Webster and William A. Brady, defendants, to the bill of complaint of Augustin Daly, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts *thereto* as this defendant is advised is or are material, or necessary for him to make answer unto, this defendant, for answering, saith:

1. That he has no knowledge or information sufficient to form a belief as to whether the complainant did, on the first day of August, 1887, or at any time, invent, compose and write a dramatic composition called "Under the Gaslight," a dramatic panorama of streets and homes in New York, in five acts, or as to whether said dramatic composition, or whether each or all or any of the scenes
224 and incidents therein were originally the conception and invention of said complainant, or as to whether said composition, in dialogue, scenery, characters, incidents and dramatic and theatrical effect, or in any of these, was wholly or in any respect original with said complainant, or as to whether on the first day of May, 1867, said complainant was a citizen of the United States of America, or was the author or the sole or exclusive proprietor or owner of said dramatic composition, or as to whether said composition had, at or before said date, been printed, published, performed or represented, or as to whether on said date, or at any time, said complainant took out a copyright therefor in said United States, or whether on said date, or at any time, he deposited a printed copy of the title of said composition in the clerk's office of the district court of the United States for the southern district of New York, or as to whether said complainant resided in the said district at said time or long before, or as to whether the said complainant, in all or in any respect, complied with the provisions of the existing acts of Congress relating to copyrights, or as to whether the said clerk then or there, or at any time, recorded said title, or as to whether com-

plainant received from said clerk a certificate and record in the form required by the acts of Congress, or whether said certificate contained the title of said composition, or as to whether the paper annexed to the bill, marked A, is a true copy of said certificate and record and of the record made by said clerk in that behalf, or as to whether the said complainant subsequently to said last-named date, or at any time, caused said composition to be printed or published, or as to whether said complainant, within three months from said date, printed and published, or at any time caused a printed copy of said composition to be delivered to and deposited with the clerk of said district court or to be delivered and deposited in the Library of Congress at Washington, or as to whether the complainant gave information of the copyright of said composition being secured to him by causing to be printed and inserted in the several
225 copies of each book or composition, on the title page thereof, or on the page immediately following, the following words, to wit: "Entered according to act of Congress, in the year 1867, by Augustin Daly, in the clerk's office of the United States district court for the southern district of New York."

Or as to whether said complainant complied with any or all of the provisions of said acts of Congress necessary to secure said benefits of said acts of Congress to said complainant, or as to whether said complainant did by said proceedings intend to obtain, hold and possess, and said defendant therefore denies each and every of said allegations.

2. The said defendant denies, upon information and belief, that said complainant did obtain, hold and possess, or now holds and possesses, by virtue of the acts of Congress approved February 3d, 1881, and the acts amendatory thereof and supplementary thereto, or by any of them, the sole and exclusive or any right or privilege to print and publish such dramatic composition and book, or the sole and exclusive or any right to act, perform and represent the said dramatic composition or play, or to cause it to be acted, performed or represented on any stage or public place during the whole period for which said copyright was obtained, or that he holds and possesses any of said rights.

3. This defendant has no knowledge or information sufficient to form a belief as to whether said dramatic composition was produced, performed and represented for the first time in any place or on any stage on the 12th of August, 1867, under said complainant's direction or otherwise and for his benefit, at the New York theatre in the city of New York, or was thereafter represented for eight consecutive weeks, or that the same met with much favor and success or attracted crowds of persons or was a pecuniary profit to said complainant to a large or any amount, or gained for said plaintiff fame as the author thereof, or that since the 12th of August, 1867,
226 the said play "Under the Gaslight" has frequently been represented in cities in all parts of the United States upon the stage, or has been produced by said complainant or by other persons under his license, or has been a very successful or popular play, or has been seen by a great number of persons, or that said complain-

ant has received as profits from the production of said play, or fees from persons performing under his license, a very large sum of money in each or any year from the year 1867, or that the cause of said success, fame and profit was the originality or extraordinary novel nature of the principal scenes and incidents of said composition or of the scene and incident in the third scene of the fourth act of said composition, known as the railroad scene or sensation, or that the said incident as set forth in said complaint was entirely novel and unlike any dramatic incident theretofore known to have been represented on any stage or invented by any author before the said complainant inserted the same in his said composition or produced and represented the same, or that the said railroad scene or sensation was, as soon as produced and represented by said complainant, or has ever since been or is now regarded whenever it is witnessed to be one of the most novel, startling and attractive incidents ever represented on any public stage, or that the said dramatic composition, or of the said railroad scene or sensation caused the same to become famous in all parts of the United States, Canada and England, or that the said play or dramatic composition was repeatedly produced and represented by and for the advantage of said complainant in any of the States, cities and towns of the United States or everywhere, to the great or any profit of the said complainant, or that the chief value of said composition or its popularity depend upon said railroad scene or sensation, or upon the representation of said scene in said composition only, and he therefore denies each and every of said allegations.

3. Said defendant, upon information and belief, denies that Dion Boucicault, mentioned in said bill of complaint, procured a
227 copy of said composition, or prepared therefrom the play called by said Boucicault "After Dark," or that said Boucicault introduced in said play "After Dark" several or any of the scenes and incidents of said complainant's composition "Under the Gaslight," or that he so introduced or that he followed the invention or plan of said complainant's composition in any manner whatever, or that he colorably, or otherwise, took from said complainant's composition any of the scenes and incidents, and he denies each and every of said allegations.

4. Defendant, upon information and belief, denies that the railroad scene in the play or dramatic composition of Dion Boucicault, entitled "After Dark," was taken by said Boucicault, colorably or otherwise, or copied or imitated in any way from the said play "Under the Gaslight." And, upon information and belief, this defendant alleges that said Boucicault had not read nor seen complainant's dramatic composition "Under the Gaslight," or any part or portion thereof, or any scene, situation, incident, dialogue or business of said dramatic composition at the time he, the said Boucicault, invented and composed his said dramatic composition "After Dark."

6. That the said Dion Boucicault was not a party to the proceedings alleged in said complaint, in which the complainant herein was plaintiff and Henry D. Palmer and Henry C. Jarrett were de-

fendants, and that the said Boucicault did not appear in said proceedings or make any affidavit or present any proof, and that he was not called upon to make any affidavit or present any proof in said proceedings.

7. This defendant has no knowledge or information sufficient to form a belief as to whether said complainant from time to time, after the decision in said proceedings set forth in said complaint, received from the persons performing said play "After Dark," by Dion Boucicault, or from any of them in different cities of the United States, or in any of said cities, royalties, or any royalty, for the use of said railroad scene, or as to whether said complainant has received from other persons performing different plays and dramas in which was the railroad scene initiated from or like the railroad scene in the said play "Under the Gaslight," large or any sums of money as royalty for permission or license to use said scene, and he therefore denies the same.

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8. The said defendant denies that at the present time, or at any time, the defendants herein, George P. Webster and William A. Brady, or either of them, with full or any knowledge of complainant's rights in the drama "Under the Gaslight" and in the said railway scene have been producing the said play "After Dark" and using and producing in the said play "After Dark" the railway scene, and he denies that the said defendants have produced in said play several of the scenes and incidents of the complainant's play, or have varied the said scenes and incidents slightly or in any respect, or have followed the plan of complainant's play in any manner, or have colorably or in any respect varied any of the scenes and incidents of the complainant's play in the said composition "After Dark," or that they have substantially or in anywise retained the dramatic features of complainant's said composition and represented the same with colorable variations.

Upon information and belief this defendant denies that the scene in the play "After Dark," as set forth in said bill of complaint or otherwise, is a palpable imitation or any imitation of the railroad scene in complainant's dramatic composition "Under the Gaslight," or was or is plagiarized therefrom or put into the play "After Dark" by the said defendants, or either of them, for the purpose of obtaining pecuniary benefit which might result to complainant from the representation of his said play, and he alleges, upon information and belief, that the said railway scene in the said play "After Dark," as produced by the said defendants, was invented and composed by the said Dion Boucicault without any aid or assistance whatever from the railway scene in the said complainant's production, and without having been seen or read by the said Dion Boucicault and without any knowledge on the part of said Boucicault of the said railway scene in said dramatic composition of said complainant.

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10. This defendant denies that the said play "After Dark" has been performed by the said defendants to their great profit, or that it was noted for its success and profit to any imitation of the said railway scene in complainant's dramatic composition.

11. They admit that they agreed with said Henry C. Miner to produce the said play "After Dark" at the People's theatre in the city of New York, and allege that the railway scene as produced in said play "After Dark" at said People's theatre from the first day of its production at said theatre and every night thereafter is as follows, and not otherwise:

One of the characters, Gordon Chumley, comes to the concert hall of Dicey Morris, known as the Elysium, by appointment, in order to take up from Chandos Bellingham a forged draft of his friend Sir George Medhurst. After paying the money he drinks some wine which is drugged, and then Morris and Bellingham put him through a trap-door supposed to lead to the cellar which leads to the tunnel of an underground railroad. The following scene shows the cellar, and then follows the scene of a tunnel, with railroad tracks and a switch. Gordon Chumley is seen walking along the track in a dazed condition from the effects of the drug, and the sound of an approaching train is heard. Old Tom, who was in the Elysium at the time Chumley took up the draft, and who was also thrown into the cellar, yells at Chumley. While staggering along in a dazed condition he unconsciously falls against the switch-handle, throws the switch, and the train passes onto the other track. The engineer, noticing something wrong, whistles down brakes and the train stops without crossing the stage, and the curtain falls.

230 12. That said scene is in no way similar to the scene in the complainant's alleged copyrighted play excepting that the scene represents railroad tracks and the appearance of an engine upon the stage. None of the scenes leading up to or surrounding the scene in complainant's alleged play are presented or in any way suggested by the play "After Dark" or the said scene. That the said play "After Dark" is, in every instance, and in character, incident, plot, motif, business and dialogue as widely different from the complainant's play as two plays possibly can be, and one in no way suggests the other.

13. The said play "After Dark" was produced at the National theatre in the city of Philadelphia with a scene containing an underground railroad, and one of the characters, Gordon Chumley, suspended from an aperture in the top of the tunnel hanging over the rail; but the said railway scene as produced in Philadelphia was not produced at the People's theatre in the city of New York, but the railway scene as produced at said theatre in the city of New York was and is as hereinbefore described.

14. The said defendant denies that the said performance of the play "After Dark" where "Under the Gaslight" is performed seriously or in anywise injures said complainant and lessens the value of said play "Under the Gaslight," or diminishes the amount to be received by said complainant from the licensing of said play, and that such injury cannot be accurately or in anywise ascertained or computed, or that compensation therefor cannot be made by damages, or that the said complainant has been or is irreparably damaged by reason of the performances of said play "After Dark" by

the defendants, or by the announcement or advertisement thereof with the said railway scene therein or otherwise.

15. As and for a further and separate answer and defense
231 this defendant alleges upon information and belief that the incident of a railroad scene upon the stage and the rescue of one of the characters in the play from being killed by the train as not new or original with the complainant. That as early as 1843 this defendant alleges, upon information and belief, a play was performed in London, England, known as the "Scamps of London," written by W. J. Moncrieff, purporting to be founded upon the French play "Les Bohemiens," in which first-named play the third act of scene three represents a railway: Devereau, one of the characters, drugs Louisa and places her body across the railway track. The sound of the train is heard just as her father, who had been stabbed, returns to consciousness and saves his daughter by pulling her off the track just as the train dashes from the tunnel and crosses the stage. That the said play was repeatedly performed thereafter, as defendant alleges upon information and belief, and that it has been printed and is for sale publicly in the city of New York and elsewhere, and has been for a long number of years, and among others has been published by Samuel French, of London, and Samuel French & Son, of New York, publishers of complainant's alleged play—to which play, the "Scamps of London," defendants beg leave to refer as part of their answer.

16. As and for a further and separate answer and defense these defendants reiterating, re-asserting and re-alleging the allegations contained in the 15th paragraph hereof, further allege that the said book and play, "Scamps of London," has been published in this country and in London and dedicated to the public, and has been sold and distributed for a number of years, with the description of the scene of a railroad and the rescue of a character from destruction, which publication has continued for years with the knowledge of complainants, as defendants allege upon information and belief, and without any interference by them therewith, and that the said complainant has abandoned and lost whatever rights he may have had to the said scene by abandonment and laches, by reason of publication of the said play.

232 And this defendant denies all the said bill charged without this—that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered, confessed, traversed or denied is not true to knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE P. WEBSTER,
WM. A. BRADY, *Defendants.*

A. J. DITTENHOEFER,
Solicitor for Defendants.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

George P. Webster and William A. Brady, being duly and severally sworn, deposes and says that he is one of the defendants herein; and each for himself says that he has read the foregoing answer and knows the contents thereof: that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

GEO. P. WEBSTER.
WM. A. BRADY.

Sworn to before — this 31st day of May, 1889.

WM. C. FOLEY,
[SEAL.] *Notary Public, Kings County.*

Cert. filed in N. Y. Co.

(Endorsed:) Circuit court of the U. S. for the southern district of New York. Augustin Daly, plaintiff, against G. P. Webster, Wm. A. Brady, & Henry C. Miner, defendants. Answer. Howe & Hummel, attorneys for H. C. Miner, 87 & 89 Centre street, New York city. U. S. circuit court. Filed Sep. 16, 1889. John A. Shields, clerk.

233 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
WILLIAM A. BRADY and GEORGE P. WEBSTER, Impleaded, &c., Defendants.

Notice is hereby given that we shall proceed to take proofs for final hearing on the part of the defendants above named under the sixty-seventh rule of the Supreme Court for courts in equity as amended, or in accordance with the statute in such case made and provided and in pursuance with the rules and practice of this court, before Samuel S. Blatchford, Esquire, an examiner of this court, at his office, No. 16 Exchange place, in the city of New York, on the 5th day of March, 1890, at 2 o'clock in the afternoon.

You are notified to attend and cross-examine any witnesses produced.

The examination will be adjourned from day to day, and to such time and place as may be required without further notice.

Dated New York city, February —, 1890.

Yours, &c.,
A. J. DITTENHOEFER,
Defendants' Solicitor, 96 Broadway, N. Y.

To Messrs. Olin, Rives & Montgomery, complainant's solicitors.

234 United States Circuit Court for the Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants.
Before Samuel A. Blatchford, Examiner.

Testimony taken on behalf of defendants George F. Webster and William A. Brady, under and pursuant to the sixty-seventh rule in equity of the Supreme Court of the United States, as amended, before Samuel A. Blatchford, one of the standing examiners of this court, at his office, No. 16 Exchange place, New York city.

MARCH 5TH, 1890—2 p. m.

Appearances: Mr. David Gerber, for the defendants Webster and Brady. Mr. Stephen H. Olin, for the complainant.

It is stipulated by counsel that the testimony be taken by the examiner through a stenographer, and that the notes when written out shall be signed by the witnesses with the same force and effect as if the testimony had been taken in the handwriting of the examiner.

Defendants offer in evidence notice of taking of testimony, which is marked "Defendants' Exhibit Notice of Taking Testimony, S. A. B., examiner."

235 CHARLES H. VAN NOSTRAND, called on behalf of the defendants, and being duly sworn by the examiner, testifies as follows:

Direct examination by Mr. GERBER:

1 Q. Are you connected with the clerk's office of the United States court for this district?

A. Yes.

2 Q. Is the answer shown you taken from the files of that court?

A. Yes.

Defendants offer in evidence the answer of the defendants Webster and Brady, filed June 23d, 1889.

It is objected to as being incompetent, immaterial and irrelevant.

The answer is marked "Defendants' Exhibit Daly *v.* Webster Answer, S. A. B., examiner."

3 Q. Is the docket now shown you, endorsed equity docket No. 4, U. S. C. C., the original docket entries of the clerk taken from your office?

A. Yes.

Defendants offer in evidence the docket entries of the clerk from the book identified by the last witness, at page 65, in the suit of Augustin Daly *vs.* Henry D. Palmer and Henry C. Jarrett. They are as follows:

1868.
Nov. 10. Filed bill.
Nov. 10. Issued sub. and ticket.
Nov. 25. Ent'd app. of def ts by Wm. D. Booth.
Dec. 15. Injunction granted, see opinion of Judge Blatchford.
Dec. 15. Filed affidavits on mo. for inj.
Dec. 17. Filed and entered order for injunction.

236 4 Q. This book contains all the entries, does it not, in reference to that suit?

A. Yes.

5 Q. And all the steps that were taken in that suit?

Objection as immaterial, irrelevant and improper.

A. Yes.

No cross-examination.

CHARLES H. VAN NOSTRAND.

Subscribed and sworn to before me this 13th day of March, 1890.
SAMUEL D. BLATCHFORD, *Examiner.*

PATRICK JAMES MCDONALD, called on behalf of the defendants Webster and Brady, and being duly sworn, testifies as follows:

Direct examination by Mr. GERBER:

1 Q. Where do you live?

A. 169 Bowery; employed at the People's theatre.

2 Q. Of which Henry C. Miner is proprietor and manager?

A. Yes.

3 Q. In what capacity?

A. Stage carpenter.

4 Q. How long have you been there?

A. This is the second season there; all last season and this season so far.

5 Q. Were you there during the time that performances were going on of the play of "After Dark"?

A. Yes.

6 Q. Did you see those performances?

A. I did. I didn't see all of them. I saw part of them. I was there every night.

7 Q. Did you see a scene there performed in which there is a railroad or miniature railroad?

237 A. Yes.

8 Q. Was there in the performance of that play, in that scene or any scene, a character tied, fastened or laid across a track?

A. No.

9 Q. Was there in the performance of that scene, or in any scene of the play as performed, a character suspended from an aperture so that he would be in danger of being struck by a passing train?

A. No; there is not that I remember.

11 Q. Was there in the performance given, during that scene or

any scene of the play, the incident of a character called Old Tom breaking through an aperture of a wall so as to reach the train or scene containing the train?

A. No, not that I saw or remember. It is a pretty hard thing to call all these things to memory, we have a different show every week.

11 Q. Tell, if you please, how that scene was performed at your theatre with reference to the character of Gordon Chumley being saved from being cut down or run down by the train?

A. He seemed to be drugged or in a stupor, and in staggering fell against the switch—the arm of the switch or whatever you call it.

12 Q. After he fell against the switch, would the train pass upon the same track, or would it be side-tracked?

A. Side-tracked.

13 Q. So that no other character in the play would save Gordon Chumley?

Objection as calling for a conclusion, as incompetent, no foundation being laid, and as leading in form.

14 Q. He saves himself by falling against this switch?

A. I don't understand you.

15 Q. Gordon Chumley is the name of the character who is supposed to be drugged?

A. I believe it is.

238 16 Q. The character that is on the track?

A. Yes.

17 Q. The character that appears in that scene, as you say in a dazed or drugged condition, is not run down by the train, is he?

A. No.

18 Q. Does any character come and save him?

A. No.

19 Q. So that, as I understand you, he is saved by his fall against the switch and the train being side-tracked?

Objection as leading, improper and calling for a conclusion.

A. Yes.

Cross-examination by Mr. OLIN:

20 X Q. What were the names of the characters in that play?

A. I don't remember.

21 X Q. What was the action of the first act of that play?

A. I could not tell.

22 X Q. What was the action of the second act of that play?

A. I don't remember.

23 X Q. What was the action of the third act of the play?

A. I could not tell the action of any act in the play.

24 X Q. The People's theatre is a theatre at which a number of companies give a number of performances at different times.

A. People usually play a week at a time—sometimes two weeks, but very seldom.

25 X Q. What other characters appear in what you call the railroad scene, beside the person you described as being drugged?

A. A tramp, I think; I could not say for sure about
239 that, or anything about the characters; I don't remember it.

26 X Q. Your only relation to the theatre is as stage carpenter?

A. Yes.

27 X Q. At the time this play was being performed you were attending to your duties as stage carpenter?

A. Yes.

28 X Q. Do you know the story or plot of this play?

A. No.

29 X Q. Do you know any part of it?

A. No; not that I can call to mind.

30 X Q. Do you remember any dialogue or conversation in the play?

A. Not that I can call to mind now.

Redirect examination by Mr. GERBER:

31 Re-D. Q. You have full charge of the stage?

Objection as leading in form and improper.

A. Yes.

32 Re-D. Q. Do you remember, after the scene, removing the scene, that is, that——

A. I do; part of it.

33 Re-D. Q. Is your recollection clear as to whether or no a character is tied or laid across the track?

A. I am positive about that; nobody was tied or laid across a track.

34 Re-D. Q. You are likewise positive that there was no character tied or suspended from an aperture of the wall where there would be danger of being struck by the passing train?

Objection as leading in form.

A. Yes.

35 Re-D. Q. Do you remember whether the train passed entirely across the stage or stopped——

A. It did.

36 Re-D. Q. Are you very clear whether or not there was a switch in that scene?

240 A. I know there was a switch.

37 Re-D. Q. Do you recollect whether there was a concert scene in that play?

A. I do.

38 Re-D. Q. Do you remember whether any person did what is called specialty acting in that play?

A. Yes.

39 Re-D. Q. Who?

A. Bobby Gaylor and several others; I don't remember the names; there were several special parts.

40 Re-D. Q. What did Bobby Gaylor do?

Objection as immaterial.

A. Sort of sung and danced, cracked jokes, handspring.

41 Re-D. Q. American dialect?

A. Irish.

42 Re-D. Q. Do you recollect whether any scene in the play was a river or tank scene?

Objected to as leading, immaterial and irrelevant.

A. Yes.

43 Re-D. Q. State, if you can, how the gambling scene terminated.

A. I cannot call that to mind. I think it terminated in a prayer. I am not certain.

44 Re-D. Q. Did you set or superintend the setting of the scenes?

A. Helped to set it; their carpenter of the show superintended it; I helped some tending to the borders and laid tracks.

45 Re-D. Q. And assisted in the removal after the scene was over?

A. Yes.

P. J. McDONALD.

Subscribed and sworn to before me this 8th day of March, 1890.

SAM'L A. BLATCHFORD, *Examiner.*

241 Defendants read in evidence the story entitled "Captain Tom's Fright," from page 653 to page 660, both inclusive, of the book entitled "The Galaxy," volume III, 1867, the title page of which is as follows: "The Galaxy; an Illustrated Magazine of Entertaining Reading, volume III, 1867. Jan. 1st, 1867, to April 15, 1867. New York. W. C. & F. P. Church, 39 Park row, 1867."

It is marked "Defendants' Exhibit 'Captain Tom's Fright,' S. A. B., examiner."

Objection as immaterial and irrelevant.

Defendants read in evidence the play entitled "The Scamps of London," which is marked "Defendants' Exhibit 'Scamps of London,' S. A. B., examiner."

Objected to as being immaterial and irrelevant; it does not appear to have been published at the time of the copyrighting of the play in question, and it does appear to have been printed after September 19, 1868, which is subsequent to the date of the copyright of "Under the Gaslight."

Defendants' counsel states that it does not appear that it was published subsequent to the copyright alleged to have been secured by the complainant, and he calls the court's attention to the testimony of the complainant in reference to this play "Scamps of London."

Defendants read in evidence the play entitled "Lonely Man of the Ocean," which is marked "Defendants' Exhibit 'Lonely Man of the Ocean,' S. A. B., examiner."

Objection as being immaterial and irrelevant; that it does not

appear to have been published before the copyright of the complainant's play.

Further examination is adjourned to Monday, March 10th, 1890, at 2 p. m.

242 NEW YORK, *March 10th*, 1890—2 p. m.

Present: Mr. David Gerber, for the defendants Webster and Brady, and Mr. Stephen P. Olin, for the complainant.

Defendants' counsel reads in evidence play entitled "The Railroad Station."

Objection as immaterial, irrelevant, incompetent; it does not appear to have been published at the time of the composing and copyrighting of "Under the Gaslight," and it does not appear to have been called to the attention of the complainant.

The play is marked "Defendants' Exhibit 'The Railroad Station,' S. A. B., examiner."

Defendants' counsel reads in evidence the play entitled "London by Night," published by the De Witt publishing house, 33 Rose street, New York.

Objected to as immaterial, irrelevant; it does not appear to have been published at the time of the composition of the play "Under the Gaslight" or at the time "Under the Gaslight" was copyrighted, and it does not appear to have been brought to the attention of Mr. Daly.

The play is marked "Defendants' Exhibit 'London by Night,' S. A. B., examiner."

JOHN C. DENHAM, called on behalf of the defendants, and being duly sworn, testifies as follows:

Direct examination by Mr. GERBER:

1 Q. Where do you reside?

A. 87 Perry street.

2 Q. In this city?

A. Yes.

3 Q. What is your business?

A. Stage carpenter.

4 Q. How long have you been such?

A. Man and boy—all my life.

243 5 Q. How many years?

A. Say thirty-eight years.

6 Q. Mention some of the theatres that you have been connected with as stage carpenter?

A. I have been at the New York theatre, Bowery theatre, Winter Garden, Grand Opera House, Booth's theatre, Standard theatre, People's theatre, Mount Morris theatre, Tammany Hall; several others in the United States.

7 Q. Those you have mentioned are, or were formerly, theatres in this city, except, possibly, Tammany Hall?

A. Yes; that was, too, a first-class theatre.

8 Q. Did you have anything to do with the construction of the stage of any of the theatres in this city?

A. Yes; I built the People's theatre stage complete; also the Standard theatre; also the Mount Morris theatre.

9 Q. Those are all in this city?

A. Yes.

10 Q. You say you were connected with the New York theatre; where was that?

A. Broadway, above Fourth street, opposite the New York hotel.

11 Q. When were you connected with that theatre?

A. About the latter part of 1866 and 1867. I was four years there.

13 Q. Do you remember the production at that theatre of the play entitled "Under the Gaslight; a romantic panorama of the streets and homes of New York"?

A. Yes.

13 Q. Do you remember the incident of a railroad scene in that play?

A. Yes.

14 Q. Who constructed that railroad used during the performance of that play at the New York theatre?

A. I did.

244 15 Q. Was that original with you?

Objection as immaterial, irrelevant, incompetent, and leading.

A. Yes.

16 Q. Did the complainant Augustin Daly give you the instructions as to the manner of constructing that scene?

A. No, he did not; he neither gave me model or drawing.

17 Q. Was the railroad train used during the production of that play at the New York theatre?

A. Yes.

18 Q. Was it the result of instructions or ideas given to you by Mr. Augustin Daly?

Objection as incompetent, irrelevant, calling for a conclusion of the witness and leading.

A. Only that a thing should cross the stage representing a train.

19 Q. But how that should be done, or the manner in which it should be successfully performed, was that from ideas given to you by Mr. Daly?

Objection as leading, incompetent, calling for a conclusion.

A. No.

20 Q. Whose ideas were they?

A. My own.

21 Q. Did you invent it?

Objection as incompetent, calling for a conclusion, immaterial and irrelevant.

A. I did.

22 Q. Did you make any contract or arrangement with
245 Mr. Augustin Daly to permit him to use the train invented by you in connection with his play as performed by him in the New York theatre?

Objection as incompetent, immaterial, irrelevant, calling for a conclusion; stating the substance of a contract, the terms of a contract, without showing whether or not it is in writing.

A. Yes.

23 Q. I show you a paper-writing, purporting to be the original agreement between John C. Denham and Augustin Daly, made September 24th, 1867, and ask you whether the signature John C. Denham opposite the seal is your signature?

Objection as stating the contents of a writing, incompetent, immaterial and irrelevant.

A. Yes; it is.

24 Q. Whose signature is the one immediately below yours?

A. Augustin Daly, by J. F. Daly, the judge, his brother.

25 Q. Was that signed in your presence?

A. Yes.

26 Q. Immediately prior to the execution of the paper-writing did you have any conversation with Mr. Augustin Daly in reference to this agreement, and if so, state what it was?

Objection as immaterial, incompetent, as a conversation tending to vary the terms of a written agreement is inadmissible; that all conversations relating to the subject-matter were presumably merged in the writing which has been shown to the witness, are immaterial and irrelevant.

A. I did. Mr. Daly told me if I would sign that document he would pay me what I had laid out and give me $20 for every time he sold the piece; I was to get $20 for the model.

246 27 Q. And thereupon this paper-writing was signed?

Objection as immaterial, irrelevant and leading.

A. Yes.

Defendants' counsel now reads in evidence the *the* agreement identified by the witness and referred to by him in his testimony.

Objection as immaterial and irrelevant, no foundation being laid.

The agreement is marked "Defendants' Exhibit Denham-Daly Contract, S. A. B., examiner."

Revenue stamp. J. C. D. September 24th.

Agreement Between John C. Denham and Augustin Daly, Made September 24th, 1867.

Whereas, said Denham has constructed an imitation of a working railroad train to be used and now used in the play written by said Daly called "Under the Gaslight," and for which imitation said

Denham has applied for a patent, with the design of preventing the use of said imitation train in any other play; and

Whereas, said Daly has agreed to effect a sale of a model of said imitation made by said Denham with every sale of the right to perform said play:

Therefore, it is hereby agreed by said Denham in consideration of the sums to be paid him as herein stated, that said Denham will sell no models and grant no rights under his said patents without the consent of said Daly in writing, and will make models for said Daly of said imitation whenever required, and said Denham conveys to said Daly hereby the sole right to make sales of said imitation, models and rights to use the same under said patent when granted.

And said Daly hereby agrees to pay said Denham for each model made by him on every sale of said play and of every play written by him in which a train is introduced the sum of $20, and to
247 pay said Denham all the cost of obtaining said patent not exceeding the sum of sixty-six dollars, and to effect a sale of one model for every sale of said play.

Witness the hands and seals of the parties hereto the day and year first above written.

JOHN C. DENHAM. [SEAL.]
AUGUSTIN DALY,
By J. F. DALY. [SEAL.]

In the presence of—the words "this day" struck out before execution and the date altered to 24th instead of 19th before execution, and the words "and of every play written by him in which a train is introduced" interlined over 29th line before execution—
GEORGE F. NOYES.

(Endorsed:) "Received, New York, September 19th, 1867, forty-five $\frac{50}{100}$ dollars on account of expense for obtaining patent in pursuance of foregoing agreement, from Augustin Daly."

28 Q. In whose handwriting are the initials "J. C. D." and the words "September 24th" over the stamp at the head of the agreement?

A. That is mine.

29 Q. You say you had a conversation with the complainant immediately prior to the execution of the agreement, "Defendants' Exhibit Denham-Daly Agreement;" where was that conversation?

Objection as immaterial and irrelevant.

A. On the stage of the New York theater.

248 30 Q. How shortly prior to the execution of the agreement which is in evidence?

A. About two months, I think.

31 Q. That you had this conversation?

A. Yes.

32 Q. About how long was it prior to the execution of the agreement in evidence that you had the conversation in which the complainant referred to your signing the agreement in evidence?

Objection as immaterial and irrelevant.

A. About two or three days.

33 Q. Who prepared the "Defendants' Exhibit Denham-Daly Agreement"?

Objection as immaterial and irrelevant.

A. Mr. J. F. Daly.

34 Q. Were you represented by counsel?

Objection as immaterial and irrelevant.

A. No.

35 Q. I notice that endorsed upon the agreement is an acknowledgment of the receipt of $45.50. In whose handwriting, if you know, is that endorsement?

A. I think a young man in the office—I don't know whether it was by Mr. Daly or not.

36 Q. You mean Judge Daly by Mr. Daly?

A. Judge Daly.

37 Q. J. F. Daly is the person you refer to?

A. Yes.

38 Q. You don't know if it is his writing or a young man's in his office?

A. No.

39 Q. Did you, upon the day of the execution of the agreement, receive $45.50?

A. Yes.

40 Q. The receipt is dated September 19th, 1867, the date it originally bore, but you received the money you say upon the 24th?

249 A. Yes; when I signed that paper.

41 Q. Prior to the execution of the agreement had you made an application for a patent?

Objection as immaterial, irrelevant and incompetent.

A. Yes.

42 Q. Had you expended any sums in making that application?

Objection as immaterial and irrelevant.

A. Yes.

43 Q. I show you two paper-writings and ask you, after looking at them, to state how much had been expended, if you know, in making that application for a patent?

Objection as immaterial, irrelevant, incompetent, no foundation being laid for such a question.

A. $45.50.

Defendants' counsel reads in evidence the paper used by the witness to refresh his recollection in answering the foregoing question, one dated September 16th, 1867, and the other dated September 17th, 1867.

Objection as immaterial, irrelevant and incompetent, no foundation being laid for the —.

The papers are marked "Defendants' Exhibits Denham Receipts Nos. 1 and 2."

44 Q. Was the patent for this railroad train for theatrical purposes, which you made, allowed?

Objection as immaterial, irrelevant, incompetent, proving the contents of a record by parol.

A. Yes.

250 45 Q. I show you a paper-writing dated November 2d, 1867, purporting to be from the Commissioner of Patents, notifying you that the patent had been allowed, and ask you if you received that about the time it bears date?

Objection as immaterial and irrelevant.

A. Yes.

Defendants offer in evidence notice allowing patent.

Objection as being immaterial, irrelevant and incompetent, no foundation being laid, and there is no proof of the genuineness of the paper, and it is not a proper way to prove a patent.

It is marked "Defendants' Exhibit Allowance of Patent Imitation Railroad Train for Theatrical Purposes, S. A. B., examiner."

46 Q. Did you pay the final fee on issuance of that?

Objection as immaterial.

A. No.

47 Q. After receiving the notice of the allowance of the patent in evidence you made no additional payments, you say, to the Patent Office?

A. No.

48 Q. Why not?

Objection as immaterial and irrelevant.

A. I would not get anything out of it.

49 Q. Did the complainant pay you the $20 to pay the final fee?

Objection as immaterial and irrelevant.

A. No.

251 Cross examination by Mr. OLIN:

50 X Q. Who were the managers of the New York theatre at that time in 1867?

A. The Worrell sisters.

51 X Q. What was your position?

A. Master carpenter.

52 X Q. Who told you a train was wanted for this play?

A. Mr. Daly, Mark Smith and Louis Baker.

53 X Q. Did they tell you what the train was to do?
A. No.
54 X Q. Did they tell you it was to pass across the stage?
A. That was all.
55 X Q. Did they tell you anything about the size of the train?
A. No.
56 X Q. Did they tell you the train was to run over or was threatened to run over any person—any human being?
A. No.
57 X Q. They simply told you they wanted an imitation railroad train constructed?
A. Yes.
58 X Q. So that it would resemble a real train?
A. He didn't tell me what it should resemble; he told me he wanted me to make a train of cars to go across the stage, he didn't tell me the size or anything.
59 X Q. Did you proceed to make the train of cars?
A. No, I proceeded to make the model.
60 X Q. Did you show that to Mr. Daly?
A. To Mr. Mark Smith and Mr. Daly and Mr. Baker.
61 X Q. What did they say?
A. Mr. Daly didn't do anything; Mr. Baker shoved up his shoulders and went into the office.
62 X Q. Did Mr. Daly say anything about it?
A. No.
63 X Q. Did you tell them the size you proposed to make the train?
A. Yes.
252 64 X Q. At that time?
A. Yes.
65 X Q. And the material you proposed to use?
A. Yes.
66 X Q. You made, you say, a model?
A. Yes, a working model.
67 X Q. How large was it?
A. About 30 inches or 40 inches long.
68 X Q. What did it consist of—the train?
A. It consisted of an engine, tender and passenger coach, or two passenger coaches, I am not certain which.
69 X Q. Did you then proceed, after showing the models to Mr. Daly, to construct the train?
A. No.
70 X Q. Did you cause it to be constructed?
A. No, not under that management.
71 X Q. Who constructed the train that was used in any theatre for that play?
A. I did.
72 X Q. When did you construct it?
A. Somewheres in the spring of '67, near about that.
73 X Q. After you had shown the model to Mr. Daly and had the conversation you spoke of?

A. About eight months after.

74 X Q. Did you construct the train according to the model you showed Mr. Daly?

A. Yes.

75 X Q. Under whose direction?

A. They told me to go ahead and get the piece up and I went ahead.

76 X Q. Who told you?

A. Mr. Worrell and Mr. Fitch.

77 X Q. They were the managers of the theatre?

A. One the acting manager and the other lessee.

78 X Q. Did they tell you to make the train in accordance with the model?

A. Yes.

79 X Q. Did you do it?

A. Yes.

80 X Q. What did you make it of?

253 A. Four-inch white pine in strips and canvas.

81 X Q. Was it in accordance with the model you had shown Mr. Daly?

A. Yes.

82 X Q. Did you then show it to him after it was constructed?

A. Of course.

83 X Q. What did he say?

A. He thought it would not work; it was one Sunday afternoon and he thought it would not work. Mr. Daly was with him on the stage, we were putting the train together and Mr. Daly and Judge Daly laughed at the idea; I was going to throw the train up in the theatre at the sneers they gave me, and one of my men came to me and said——

84 X Q. Did it work?

A. Yes.

85 X Q. When did you make your application for a patent?

A. I could not tell, about September.

86 X Q. After the train had been constructed?

A. Yes, while the piece was running.

87 X Q. Did you ever apply to Mr. Daly for the difference between $45.50 and $66.00?

A. No, sir.

Redirect examination by Mr. GERBER:

88 Re-D. Q. Where is Mr. Mark Smith?

A. He is dead.

89 Re-D. Q. And Mr. Louis Baker?

A. Both are dead.

90 Re-D. Q. You said, in answer to question by counsel, "We were putting the train together." Whom did you mean by "we"?

A. My help.

91 Re-D. Q. In getting up scenes in the theatres, what is the custom, if any, in reference to preparing models?

Objection as immaterial, irrelevant, no foundation being laid.

254 A. The author or manager will suggest to the artist now-a-days, and the artist will get up the models in card-board and in paper painted, representing the scene on scale.

92 Re-D. Q. And you showed Mr. Daly the model you have testified to?

A. Yes.

93 Re-D. Q. In preparing that model, did you get your ideas or any idea in reference to it from Mr. Daly?

Objected to as immaterial, irrelevant and incompetent.

A. No, sir.

94 Re-D. Q. You said you showed the complainant the model and that he sneered at it?

A. At the big train, when I had it together.

95 Re-D. Q. Did the large train follow the model as you had prepared it?

A. Precisely.

96 Re-D. Q. Was there any change made after the complainant sneered at the manner in which it was done?

A. Not a bit. I was putting a line in the train at the time.

97 Re-D. Q. Did the complainant assist you in any way in preparing your model, or in the manner in which it should be done?

A. No.

98 Re-D. Q. Does the same answer apply to the large train you made from the model?

A. Yes.

99 Re-D. Q. You say you didn't apply to the complainant for the difference between $45.50 and the sum of $66 referred to in "Defendants' Exhibit Denham-Daly Agreement"—state why you did not.

Objection as immaterial and irrelevant.

A. I didn't get any chance at it at all, he would not speak to me about it at all.

255 100 Re-D. Q. Did the complainant pay you anything beyond the $45.50 which you testified you received?

A. Only as a present, he would give me five dollars once in a while, as the train would go across the stage after it was over.

101 Re-D. Q. Were these presents which you speak of made during the run at the New York theatre?

A. Yes.

JOHN C. DENHAM.

Sworn and subscribed to before me this 17th day of March, 1890.

SAM'L A. BLATCHFORD, *Examiner.*

Further hearing adjourned.

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256

C. C. U. S., S. D. N. Y.

DALY *vs.* WEBSTER. } In Equity.

Defendants' Exhibit Denham Receipt No. 1. S. A. B., Master.

NEW YORK, *Sept.* 16, 1867.

Mr. John C. Denham to Publishers of The American Artisan, Dr.:

To 1st Government Rev. stamp fee on application for patent on railroad train for theatrical purposes $15 50
" Agency fees for preparing application for patent .....
" Subscriptions from Vol. —, No. —, to Vol. —, No.— .....
" Advertising — lines — times from No. — .....
" Engraving of —.....
" Preliminary examination on —.....

Received payment,

BROWN, COOMBS & CO.,
Per A. LE CLERE.

257

C. C. U. S., S. D. N. Y.

DALY
vs.
WEBSTER. } In Equity.

Defendants' Exhibit Denham Receipt No. 2. S. A. B., Master.

NEW YORK, *September* 17, 1867.

Mr. John C. Denham to Publishers of The American Artisan, Dr.:

To 1st Government Rev. stamp fee on application for patent... .. .. $30 00
" Agency fees for preparing application for patent on train for theatrical purposes..
" Subscription from Vol. — No. — to Vol. — No. — .....
" Advertising — lines — times from No. — .....
" Engraving of — ....
" Preliminary examination on — ....

Received payment,

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258 C. C. U. S., S. D. N. Y.

DALY
vs.
WEBSTER. } In Equity.

DEFENDANTS' EXHIBIT ALLOWANCE OF PATENT IMITATION RAILROAD TRAIN FOR THEATRICAL PURPOSES. C. A. B., Master.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, *November* 27, 1867.

SIR: Your application for a patent for an improvement in imitation railroad train for theatrical purposes has been examined and allowed. The patent will be engrossed for issue on the receipt of twenty dollars, the balance of the fee payable thereon if received within six months.

Respectfully,

T. C. THEAKER,
Commissioner, No. 50 First Street, New York.

To John C. Denham, care Brown, Coombs & Co., New York.

The act entitled "An act in addition to promote the progress of the useful arts," approved 2d March, 1861, provides that on filing a caveat the sum of ten dollars shall be paid; on every original application for a patent, except for a design, fifteen dollars; on issuing each original patent, an additional fee of twenty dollars must be paid. The fee on an application for a reissue is thirty dollars.

Amendment of 3d March, 1863, provides in section 3 that every patent shall be dated as of a day not later than six months after the time at which it was passed and allowed, and notice thereof,
259 sent to the applicant or his agent, and if the final fee for such patent be not paid within the said six months, the patent shall be withheld, and the invention therein described shall become public property as against the applicant therefor. *Provided*, that in all cases where patents have been allowed previous to the passage of this act, the said six months shall be reckoned from the date of such passage.

[Applicants for patents are requested upon paying the final fee to notify that office how many copies of the specifications they desire to have furnished them. These copies will hereafter be printed and furnished at about half the rate heretofore charged for written copies. This information from applicants is necessary to enable the office to determine how many copies to have printed in each case.]*

Each extra copy of your specification will cost fifty cents, each copy of drawing two dollars and twenty-five cents.

[* Matter enclosed in brackets in italics in copy.]

C. C. U. S., S. D. N. Y.

DALY
vs.
WEBSTER. } In Equity.

DEFENDANTS' EXHIBIT "CAPTAIN TOM'S FRIGHT." S. A. B., Master

Captain Tom's Fright.

"I tell you I never was so frightened in my life," said Captain Tom Kestle, filling his brierwood and running home the tobacco with a bit of stick, "excepting once," he added, reflectively.

"How was that, Captain," said I, detecting indications of a yarn; "let's have it if it's worth telling." The captain lit a cedar splint at the fire and proceeded to ignite his pipe, the flame of the dry stick bringing out his strong, quiet features and gravish hair and beard in relief against the black woods behind him.

260 Cannot some modern Rembrandt take for his subject the head of a fine-looking soldier as he lights his pipe at night? Hundreds of times has the picturesque effect caught my eye and made me wish that it could be fixed on canvas. Our fire had been suffered to die out at sunset, save such smouldering embers as would attract no hostile eye, and only threw a dim red glow over the half-dozen officers crouched around. We were just behind the crest of one of those passes in the Virginia mountains, which were taken and lost so many times during the war for the Union. We had a section of light artillery, five or six companies of infantry, and a mounted orderly or so, and were instructed to hold the position for twenty-four hours at all hazards. Looking up the stony road from where we sat under the cedars, one could just see the outline of our two field pieces where they stood pointing over the crest of the hastily constructed parapet, and about them the dim forms of the gun squads waiting for the expect*ing* firing of the pickets some two hundred yards down the slope beyond. The cold mountain wind swept over the ridge and down through the rustling cedars to the now empty and blackened redoubt which we had carried the day before. Captain Tom had led the assault, and it was the story of his experience therein that he had just finished, with a remark as to his comparative fright on that and a former occasion. The captain had the coolest way of talking about his personal frights, a way which we understood perfectly, for most of us had too often seen him in action to believe his astounding accounts of his own cowardice. I actually believe that to this day many a casual hearer of his yarns thinks that Captain Tom was the coward he painted himself, for often would a stranger ask, after hearing him relate some of his exploits, how such a shameless sneak could remain in the service with honor. This time, for instance, I had seen the captain with my own eyes lead his men through the bed of a stream under a galling spatter of canister and musketry, form them under

a bank—he standing the while on a rock exposed to the fire
261 of hundred rebel riflemen—then, with a magnificent rush and scramble take them over the parapet and into the redoubt, he being the first man over by at least six or eight paces, and hauling down their bunting with his own hands.

In his own account the captain figured somewhat as follows: "I formed the men well back in the woods, behind some big trees, feeling all the while as a man does when he is swimming in deep water and sharks are 'round. I gave the word 'Forward,' and marched at their head like a hero until the rebs began to pepper us as we came out of cover. Then away went the men with a cheer into the water. I got behind two of the biggest men in the company, and made out to cross the water without much exposure except from wet feet. The men formed somehow or another under the bank, and I stood behind a big rock." I suppose this to be the rock I saw him standing *on*. "Then presently they gave another cheer, and up they went. My first sergeant prodded me on with his bayonet—the fellow seems to like me and to be jealous of my fair fame—and somehow I got over the parapet, and seeing that there was no more fighting I marched up to the flagstaff and hauled down their colors with all the dignity of a sergeant major. I tell you, I never was so frightened in my life—excepting once." This "excepting once" was an addition to the captain's usual formula for closing his yarns and checked by its seriousness the laughter which commonly followed. "Well," said he, in answer to my question and request, "we're all pretty good friends here, and I don't mind telling you now, although the yarn involves the reason why my hair is gray, as you see it. But I haven't visited those confounded outposts for the last two hours or so. I say, Charlie, would you mind going with me? If there's one thing I am more afraid of than another, it is visiting the outposts at night, and I'll swear I have had more of it to do than any other man in the corps." I, of course, gladly accompanied him. I was an aide on the division staff, and had been sent up with this detachment to bring instant news of disaster
should any occur, as well as to report all events of importance
262 from a headquarters' point of view. I was always willing to be on hand if anything was going on, for I well knew that, disaster or not, I should be cross-examined by the general the moment I reported at headquarters.

This night of which I am writing, with perhaps half a dozen others, is marked in my memory, and stands distinct from all the nights of long and weary campaigns, not so much from imminent peril as for the wild picturesqueness of its accessories. We turned our backs on the fire, and stumbled from among the dimly illumined cedar trunks into the dark road, walked up past the picket rope, where the artillery horses stood, ready harnessed, champing their bits, past the black caissons, up to the parapet where the gun squads crouched behind the slight shelter, and the two cannon looked over into the darkness beyond, ready to shatter the mountain stillness with their roar. Behind us a dim glow on the air showed where our little force lay under the woods, and beyond was

the black, empty darkness of the wide Shenandoah valley, unillumined by a single light save the fires of one or two detachments of the Federal army, while away to the southward a red glow lit up the horizon where the two great tidal waves of Union and Secession were chafing as they met, and where, very likely, shots were ringing and flames roaring in the night. Near us, however, all was stillness as we crossed the embankment and walked silently down the steeply sloping road. We advanced some two hundred yards, and then paused as we heard an ominous double click. The captain whistled softly and was answered from the direction of the click. We advanced, and a whispered consultation with the vedettes assured us that all was right, although one of them had heard voices, apparently a long way off down the mountain. We passed on to the other posts and in the course of half an hour were once more seated at our fire, and the captain was charging his inevitable pipe preparatory to the promised yarn.

"Well, fellows," began he, "I feel sort of confidential to-
263 night—a strange feeling for me, by the way—and I think some great piece of luck must be awaiting me as a consequence. However, I think I will tell you the story, although I never told it to a living soul before, and the very thought of telling it now sends a chill up the small of my back, so you mustn't be astonished if I turn childish before I get through. You must know that in the summer and fall of 1850, I was, in my profession of engineer, rebuilding a long bridge on the Sunset and Great Western railroad. My station was ten or fifteen miles from any town, and I had a gang of thirty or forty of the wildest Irishmen you ever saw caught, besides the sober mechanics who did the joiner-work on the bridge. A pretty lonely life I led, for there was hardly any one with whom it was a pleasure to associate for any length of time, though, perhaps, that was, to some extent, my fault, for I was always rather distant and reserved with the men, more from a fear of seeming to intrude, or from the opposite horror of seeming to court popularity, than from any other reason. My station was at the end of a long and perfectly straight stretch of road. I suppose there must have been fifteen miles of track without a curve of any sort, save that which belongs to the surface of the earth. As the line neared the river an easy grade raised it a few feet so as to carry the roadway of the bridge clear of the floods. Rather more than half way up this bridge was a cut-off or side track, crossing the river on a temporary trestle-work and intended to remain only while the main bridge was undergoing its repair. This cut-off was set at a very acute angle so that the speed of passing trains was scarcely checked while crossing the river. One could stand on this little grade and see the approaching trains at least a dozen miles off, when the air was clear, as they came tearing across the prairie and up the grade and over the bridge, whirling past us a momentary glimpse of the world and its life. Perhaps the conductor, if he was a clever fellow, would throw us off a package of papers. That was all we knew of outside life, for none but 'gravel' trains condescend to stop at our little station. Our quarters consisted of a

264 cluster of board shanties, with one of more luxurious build for me, all located for convenience of getting water a quarter of a mile above the bridge, where the banks of the river were accessible.

"Those of you who have Irishmen in your companies well know that whiskey naturally gravitates to their vicinity, and almost always of a Saturday night a supply was on hand in our little community, on which the week's wages were pretty certainly expended. Saturday night was always distinguished by a tearing spree, which invariably terminated in a free fight; but as the combatants were usually too drunk to do much harm to one another when the fighting time came around, no material damage was ever done. There was one among these fellows with whom, from the first, I had foreseen trouble. A thick-set, surly dog he was; Pete McGee by name, and a 'Fardowner' by birth. He had always some fault to find about his pay, was always grumbling, was continually shirking his work, and was withal a mighty drinker, and when drunk a mighty man to lead the crowd. Our antipathy to one another seemed to be led to a climax by fortune, and I had good reason to believe that twice already had Pete instigated an attack on me in my house, said attacks having been easily repelled by sundry discharges of my revolver at a high elevation.

"One day I was watching the labors of a gang who were shovelling dirt out of a drain which had been filled by a recent storm. I noticed that Pete was shirking frightfully by taking a mighty small quantity of earth on his spade, and throwing it as short a distance as possible. He saw that I noticed him, and by a muttered remark to his companions he let them know that he did. In a few minutes I saw that the whole gang had word of the shirking of Pete and my observance thereof. I made up my mind to have it out with him for the sake of discipline. I had with me a three-foot stick which I always carried for measuring purposes, a good, stout, hard cane of hickory, of which, thanks to a long residence with an old English backwoodsman, I knew also
265 the use in self-defense. 'Pete,' said I, 'if you don't do your full share of work from this time on, your name goes off the pay-roll tomorrow night, and you leave by the next train.' Pete stopped work and looked at me a moment from under his shaggy brow, then leaned his spade against the ditch side, hitched up his trousers, removed his dudheen from his mouth and stuck it in his hat, and then climbed slowly out of the ditch. Pete's shillalah and brown jug were never far from him, and he walked coolly towards them, remarking, 'Ye dirty spalpeen. I'll brak' the head of ye shure as my name's Pete McGee, an' ye may tak' me name off the roll and be damned to ye.' In an instant he had his bit of black thorn in his hand, and knocking off his hat, pipe and all, he tightened his belt and came towards me, as ugly looking a specimen as you would wish to meet. I had heard a man remark, 'Boys, here's a discussion wid sticks, shure enough,' and saw the hands stop work and watch the progress of events with the enthusiastic interest of Irishmen when they become aware that a fight was approaching.

My authority was at an end if I backed out, whereas if I made a good fight I might retain my authority, even if whipped. So I glanced around to see that there were no rolling stones or the like to step on and made up my mind to fight it out. 'Pete McGee,' said I, as he drew near, 'you'd better think twice before you do it.' 'Hould yer tongue, will ye? I've stood yer tyranny long enough,' was the only reply I received, and in a moment Pete had struck, I had parried, and we were at it. If any of you have happened to see quarter-staff play on board a man-of-war, you will appreciate the game. Some hundred men take the sticks at a time and pair off in two long lines on the main deck. Very often any two men who happen to have a quarrel settle it by getting opposite to one another and pitching in. I have seen some pretty sharp fights at such times. Pete was evidently an old hand at the sticks, and had doubtless figured in former days at many a county fair in the old country. So I stood on the defensive catching blows like
266 flail strokes aimed at head, leg and side with astonishing rapidity. Pete was evidently surprised at finding me *au fait* with the sticks; and, in truth, I had all I could do to keep him from breaking my head. As it was, he gave me an ugly crack on the left shoulder, and hit me slightly elsewhere once or twice before I let him know that I could strike. At length, emboldened by my continued attitude of defense, he attempted to break my guard and head at the same time by a downward blow nearly corresponding to the seventh cut of the broadsword exercise. It is no joke to parry a blow of that kind, struck by such a wrist as Pete had, for a slight deflection of the blow will disable your knuckles, and if you are not up to the dodge, your own stick will be driven down onto your head, which will probably end the fight. That blow, however, sealed Pete's fate. I received it on my stick held over my head, and sloping sharply just clear of my left shoulder, in fact slightly touching it. He tried to check his blow, but had put his heart too much in it; his shillalah glanced harmlessly past my shoulder, *which* with a quick turn of the wrist and forearm, I laid the whole weight of my blow fairly on the crown of his head, and Pete McGee measured his length on the ground while an involuntary hurrah rose from the balance of the workmen, who forgot, in their enthusiasm for the science, that their own champion was defeated.

"Pete worked like a Trojan after that and I even grew more popular with the hands, except when they were in liquor. It is a great thing among such fellows to know that in muscle and pluck the 'boss' is not inferior to the best of them. Two weeks passed after my battle royal with Pete, and Saturday night came. The men were paid off and the usual consumption of the 'crature' began. I examined my revolver, all six barrels were properly capped and the points of the six bullets showed as I revolved the cylinder, standing where I could catch the last light from the west. A squad of the hands strolled by as I stood at the window. I returned their 'good evening' and heard the word revolver passed among them as they went on, showing that they noted
267 my employment. I laid my pistol on the centre table

and leaned on the window sill, watching the light fading in the west, smoking my pipe, and scarcely noticing the entrance of a woman who did my housekeeping for me. She went in and out as usual, 'redding up' the room for the night, and finally bade me good-night and took her departure. I presently made all fast, and seated myself for a quiet evening with my pipe and books. By and by I began to hear the mirth at Pete's shanty, away at the other end of the street, waxing fast and furious. I heard the noise until nearly ten o'clock, when I turned in and was soon asleep. The next sound I heard was a stunning blow on my door and a confused murmur of voices outside. To seize my revolver and jump into my trousers was the work of an instant, and, on the repetition of the blow, I called out, 'Stand clear, outside; I am going to fire through the door.' The second blow had nearly dashed in the frail pine boards, and as I spoke the third shattered the door, and I could see by the dim starlight a dozen heads and sticks pressing through the doorway. Aiming at the leader, I pulled the trigger, and heard the click of the hammer on the capless cone. Quick as thought I tried two more barrels, hurled the useless revolver at the nearest head, and, seizing a chair, smashed it to pieces on the next. Then came a sharp crack or two over my own head, and the stars faded away and the dim room vanished in greater darkness and I was senseless. [How long I remained unconscious I cannot tell, but it could not have been long, for when I / first felt the damp cool air blowing over my face I could hear the retreating steps and drunken laughter of a party of men who, I concluded, were my late assailants. Gradually my senses grew clearer. Presently I opened my eyes. I lay on my right side, my head resting on a cold, hard substance. Then I distinguished the rush of water afar off—against the piers of the bridge. As my eyes became steadier I saw that the cold substance on which my cheek rested was a railroad track. I could see a few yards of it, with its companion rail, on which
268 my feet rested. Beyond and around was the dark prairie, and a quarter of a mile away twinkled a solitary light in one of the cabins. All this I stupidly realized as my stunned faculties returned, when suddenly the frightful question flashed upon my mind, 'Has the night express passed?' In an instant every sense was actually awake. I was lying bound to a cross-tie, my head slightly raised rested on a rail. I was not very near the head of the bridge, but far enough up the grade to look out over the prairie. Evidently, Pete had planned a vengeance terrible indeed. Yet how did I know but the train had passed. I twisted my neck till the cords cracked, and made out to see the 'all-right' signal twinkling at the bridge. I shouted and yelled for help, but the more earnest I became the more every one within would think my shouts only the maudlin cries of some drunken Irishman. The signal-man at the bridge could not leave his station for any ordinary cause, and certainly the cries of a drunken man on a Saturday night were not extraordinary. All this passed through my mind as I shouted, until my strength was gone. Then I lay and silently thought. My servant must have removed the caps from

my pistol. Why should she? What cause for such treason had I ever given her? Why had I located the cabin so far from the track? Think as I would the stern fact of my situation remained, and I could only hope that one o'clock, and the train, too, had passed. But now low down on the very edge of the black horizon my eye caught a faint red gleam. Too often had I watched the trains to doubt for a moment. I knew the very spot at which that dreaded red light would appear. So, then, twenty minutes, at the very longest, provided no accident happened, was the lifetime remaining for me. I strained every fiber to break my bonds or twist my neck clear of the track, but the rope was too strong, and a couple of stakes driven, one on each side of my neck, forbade any motion except a slight lateral one. In the intensity of my muscular strain I had shut my eyes. As I opened them I saw before me, nearer, brighter, steadier, the shining reflection of the advancing train. Again I shouted, again I strained, but to no purpose.

Then I lay and watched the light, as I had often done
269 in happier times, until it seemed to me that my brain must give way. I closed my eyes and tried to pray, but that fearful light shone through my eyelids and banished every other thought. And now a faint yet terrible distant rumble began to fill the air; it seemed as though my inmost soul felt that sound. Yet I remember noticing the most trivial things—a cricket that sang near by, a toad that climbed on the rail, a prawling cat that came suddenly upon me and ran frightened away—for even in that fearful moment a sense of the ludicrous was alive, and I was conscious of a feeling of amusement as the creatures scurried off. But, meanwhile, the faint rumble had grown louder, and I even fancied that I could perceive a slight vibration of the rail on which my head rested, and of the ground on which I lay. I think that about this time I must have become insane, for I only remember hearing my voice in impotent shrieks and feeling my limbs, as it were, those of another man, straining themselves to be free. All the dreadful particulars of my approaching death whirled through my brain during these few moments. Once I fancied I could hear footsteps coming towards me from the bridge, and hoped wildly that they would reach me in time. But now I could see the red reflection of the lamp on the long, straight track, and the thunder of the train was drowning all other sounds. Once more I strained every muscle till the very flesh seemed to tear; one final cry I gave for help from God or man. Then I opened my eyes—closed in my agony—and looked silently at my destruction. For one dreadful instant I saw the silver mirror of the reflector and felt the earth tremble under the roaring train, and then as the mighty engine rushed upon me nature gave out, and amid a crash of sound and a red glare of lamp and fire I swooned. The wheels of the night express had passed within a foot of my head. I had been bound on the straight track over the bridge, and the train passed me on the 'cut-off.'"]*

[*Matter enclosed in brackets in italics in copy.]

Captain Tom ceased. Hardly any comments on the story were made by the group of officers, for, after a moment of breath-
270 less stillness, the sharp crack of two or three rifles, which seemed to have been waiting for the end of the story, rang out over the bridge. In a moment the officers were running toward their respective commands. With a quiet though eager haste the infantry were manning the rifle pits, and the gunners stood with lanyards pulled taut, ready to fire at the word.

Fifteen minutes later I was tearing down the stony road, my horse's hoofs striking fire to the accompaniment of a rattling of rifles from the mountain side behind me. Before I left I had looked an instant on the dead face of Captain Tom, who fell at his post like a hero that he was.

I had barely time to mount and run for it as the gray-clad Johnnies swarmed over the parapet and captured our little band. We had been overpowered by the advance of a division of Stonewall's army, and I thought myself lucky to be able, by dint of hard riding, to reach the grand guard of our division half an hour before Stonewall's cavalry drove in our pickets on the Shenandoah.

C. L. N.

NEW YORK, *November 6th*, 1890—2 p. m.

Present: Olin, Rives and Montgomery, for the complainant; David Gerber, Esq., for the defendants Webster aad Brady.

Counsel for defendants Webster and Brady states that since the last hearing before the present examiner testimony was taken on behalf of the defendants in Boston and Washington, and that he expected to close the taking of testimony by examining before the present examiner Mr. Dion Boucicault, the author of the defendants' play; that during the past summer he has had a personal interview with Mr. Boucicault, at his house, for the purpose of calling him as a witness, and that at that time Mr. Boucicault was sick and since then he has died. With this statement counsel for defendants closes his case.

271 Circuit Court of the United States, Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, and HENRY C. MINER, Defendants. } Examiner's Certificate.

To the circuit court of the United States for the southern district of New York:

I, Samuel A. Blatchford, one of the standing examiners of this court, do hereby certify that, pursuant to the notice to take testimony, hereto annexed and marked "Defendants' Exhibit Notice of Taking Testimony," testimony on behalf of the defendants George P. Webster and William A. Brady in the above-entitled action was taken before me, as one of the standing examiners of this court, at my office, No. 16 Exchange place, in the city of New York on the

following days, viz., March 5th, March 10th, and November 6th, 1890, and that the minutes of testimony hereto annexed comprising thirty-three pages containing sixty folios, contain a full, true and complete record of all the testimony taken before me as such standing examiner on behalf of the defendants Webster and Brady herein; that the witnesses Charles H. Van Nostrand, Patrick James McDonald and John C. Denham, whose testimony appears hereto annexed, were the only witnesses examined before me on behalf of the defendants Webster and Brady, and each of said wit-
272 nesses was by me first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth in the above-entitled action, and that said witnesses thereafter each duly signed his said testimony so taken before me, having first read over the same.

That the following exhibits were offered in evidence before me on behalf of the defendants Webster and Brady, viz.:

"Defendants' Exhibit Notice of Taking Testimony."
"Defendants' Exhibit Daly *vs.* Webster Answer."
"Defendants' Exhibit Captain Tom's Fright."
"Defendants' Exhibit Scamps of London."
"Defendants' Exhibit Lonely Man of the Ocean."
"Defendants' Exhibit The Railroad Station."
"Defendants' Exhibit London by Night."
"Defendants' Exhibit Denham-Daly Contract."
"Defendants' Exhibits Denham Receipts Nos. 1 and 2."
"Defendants' Exhibit Allowance of Patent Imitation Railroad Train for Theatrical Purposes."

That the originals of all of said exhibits appear hereto annexed or are filed herewith, except as follows, viz., "Defendants' Exhibit Daly *v.* Webster Answer," which is already on file in the office of the clerk of this court; "Defendants' Exhibit Captain Tom's Fright," which is contained at pages 653 to 660, both inclusive, of a book entitled on the title page, "The Galaxy, an illustrated magazine of entertaining reading, vol. III, January 1, 1867, to April 15, 1867. New York W. C. & F. P. Church, 39 Park row, 1867," the said volume that was produced to me belonging to a public library which declined to part with the custody thereof, but of which an accurate copy is hereto annexed and certified herewith; "Defendants' Exhibit Denham-Daly Contract," which is not annexed hereto or filed herewith, but of which exhibit an accurate copy appears set forth at length in the testimony of John C. Denham, hereto annexed; "Defendants' Exhibits Denham Receipts Nos. 1 and 2," and "Defendants' Exhibit Allowance of Patent Imitation Railroad Train for Theatrical Purposes," and that an accurate copy of each of said
273 three last-named exhibits is hereto annexed and certified herewith, the originals not being annexed and certified herewith, but being returned to the custody of the solicitors for the defendants Webster and Brady, for the reason that they are so much torn and worn by age that they are liable to be entirely destroyed if subjected to handling or rough usage.

That the foregoing exhibits were the only exhibits offered in evidence before me on behalf of said defendants Webster and Brady,

except the entries at page 65 of equity docket No. 4 of this court, in the suit of Augustin Daly *vs.* Henry D. Palmer and Henry C. Jarrett, an accurate copy of which entries is set forth in full in the testimony of Charles H. Van Nostrand hereto annexed, and which equity docket is on file in the office of the clerk of this court.

That no exhibits were introduced in evidence before me on behalf of the complainant during the taking of the testimony which was taken before me on behalf of the said defendants Webster and Brady.

Dated New York, November 19, 1890.

(Signed) SAM'L A. BLATCHFORD,
A Standing Examiner of the Circuit Court of the United States for the Southern District of New York.

274 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER, WILLIAM A. BRADY, Impleaded, &c.

Notice is hereby given that we shall proceed to take proofs for final hearing on the part of the defendants under the sixty-seventh rule of the Supreme Court for courts in equity, as amended, and in accordance with the statutes in such case made and provided and in pursuance of the rules and practice of this court, before John G. Stetson, Esquire, a United States commissioner and an examiner of this court (or other proper officer under said statutes and rules), at his office in the United States court-house, in the city of Boston, State of Massachusetts, on the first day of April, 1890, at one o'clock in the afternoon.

You are notified to attend and cross-examine any witnesses produced.

The examination will be adjourned from day to day and to such time and place as may be required without further notice.

The names and residences of the witnesses who live at a greater distance from the place of trial than one hundred miles, whom it is intended to examine, are as follows:

Names of witnesses.	Residence.
Susie Mason	Boston, Mass.
Mr. Pitman (whose Christian name is unknown at present to defendants)	Boston, Mass.
Moses Kimball	Boston, Mass.
Fred W. Mozart	Boston, Mass.
275 Mr. Smith (whose Christian name is unknown at present to defendants)	Boston, Mass.

Dated March 22d, 1890.

Yours, &c., A. J. DITTENHOEFER,
Solicitor for Defendants.

Office and post-office address, 96 Broadway, New York, N. Y.

To Messrs. Olin, Rives & Montgomery, complainant's solicitors, Mutual Life Ins. building.

Circuit Court of the United States, Southern District of New York.
In Equity.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER *et al.*

Evidence for Defendants,

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, as amended, before me, John G. Stetson, examiner.

276 BOSTON, *April* 1, 1890.

Proceedings were commenced this day before the above-named examiner by the production of notice of the taking of evidence for defendants, and thereupon an agreement is produced that this examination shall be adjourned to Friday, April 4th, 1890, at one o'clock in the afternoon, and an adjournment is had accordingly.

FRIDAY, *April* 4, 1890.

Present: David Gerber, Esq., of counsel for defendants; Stephen H. Olin, Esq., of counsel for complainant.

The defendants call JAMES R. PITMAN, who is sworn to tell the truth, the whole truth and nothing but the truth in this cause, and thereupon testifies as appears in and by the following deposition:

Deposition of James R. Pitman.

Direct examination by DAVID GERBER, Esq., of counsel for defendants:

1 Int. Please state your name, age, residence and occupation.

Ans. James R. Pitman; forty-eight; East Somerville, Mass.; assistant stage manager of the Boston museum.

2 Int. How long have you been connected with the Boston museum?

Ans. I was engaged in 1864. That was my second engagement. I was engaged the first time in the season of 1863–'4, and I left during that season, and was engaged the following season by R. M. Field, the present proprietor, and have continued in his employ since then.

277 3 Int. Is it part of your duty to take charge of the manuscripts of the plays of that theatre, and, if so, state whether the manuscript now shown you, on the title page of which appears The Last Dollar, in four quarters, a current coinage by J. S. Jones, 1850, has been in your possession as an employee of the theatre during the period of your employment there?

Ans. It is my duty to take charge of manuscripts. This manuscript has not been in my possession. When I was engaged in that posi-

tion in 1864 I was not in position to have charge of the manuscripts. I didn't get into that position till—I cannot positively answer with regard to dates. I think I was made prompter of the theatre in the regular dramatic season of 1866–'7 or 1867–'8. Then I took charge of the dramatic library of the museum, in my position as prompter. I was engaged at the museum as prompter at the date of the opening of Selwyn's theatre.

4 Int. Since being prompter of the Boston museum, have you had charge of its dramatic library and of the manuscript of the play there produced, "The Last Dollar"?

Ans. That is an answer I can't give directly. Well, to state why. The manuscript is supposed to be in that library, but I have several hundred copies of plays which are in the library, and are supposed to have been there before I was a prompter.

5 Int. Did you hand the manuscript now produced to the defendant William A. Brady, and, if so, where did you get it from?

Objected to as immaterial and irrelevant.

Ans. I took that manuscript out of the Boston Museum library for the purpose of letting Mr. Brady have it, but whether I gave it to Mr. Brady or into the hands of Mr. Edgar Davenport I cannot say.

6 Int. Is Mr. Edgar Davenport, to whom you refer, connected with the theatre?

Same objections.

278 Ans. Yes, sir.

7 Int. Was that play, "The Last Dollar," produced at the Boston museum during the time you have been connected with it, or did the manuscript become a part of the library of the theatre prior to your connection with the theatre?

Same objections, and as incompetent, no foundation being laid.

Ans. It hasn't been produced since I have been there. I suppose that manuscript was in the library. I can refer to catalogues and tell you positively.

8 Int. What catalogues do you refer to in your last answer?

Ans. I refer to the revised catalogue that I made myself.

9 Int. When did you make that catalogue about, if you cannot state accurately?

Ans. It is impossible for me to say even about.

10 Int. How long after you became prompter of the theatre?

Ans. It is impossible for me to say. I have made several, and I have the one I first made.

11 Int. Can you state when you made that first one, as regards the time when you became prompter. How long after?

Objected to as immaterial, and as already answered.

Ans. No, sir.

12 Int. Does that catalogue show the list of plays which were in the library of the theatre of which you had charge?

Objected to as immaterial, and as calling for the contents of a writing.

Ans. Yes, sir.

13 Int. Will you kindly annex to your deposition the original catalogue you refer to, or a copy, and identify the copy, after comparing it with the original, with your initials?

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Objected to as immaterial, incompetent and because the paper has not been produced on the examination of the witness and further that the paper has not been produced here or put in evidence.

Ans. I cannot do anything in the first place without permission of my manager. What I mean to say is that I cannot take that catalogue from the theatre or make a copy of it without permission of the manager. I am perfectly willing to do it, provided I get permission.

14 Int. Will you kindly look at that catalogue between now and the next session, and, after looking at the same, ascertain whether it refreshes your recollection as to whether, at the time it was made by you, the manuscript produced was in the library?

Objected to as immaterial.

Ans. Yes, sir.

15 Int. Are you acquainted with the handwriting of J. S. Jones, the alleged author of "The Last Dollar"?

Objected to as immaterial, irrelevant and incompetent.

Ans. Yes, sir.

16 Int. Kindly look at the manuscript produced and state whether you recognize the handwriting of Mr. Jones.

Same objection and because no foundation laid.

Ans. That is the doctor's writing; Dr. J. S. Jones.

17 Int. Do you know whether Dr. J. S. Jones is living?

Ans. He is dead, sir.

18 Int. Do you know when he died, about the year?

280

Objected to as immaterial and irrelevant.

Ans. I do not remember.

19 Int. I show you a book, endorsed "Boston museum, 1850–'51, eighth season," and ask you whether you produced that book, and, if so, where it came from.

Same objections.

Ans. I did. It came from the office of the stage manager of the Boston museum.

Defendants' counsel refers to the book mentioned in the preceding question and answer, to play-bill headed eighth season, Boston museum, No. 43, purporting to be a play-bill of performance of Monday evening, September 16, 1850, of "The Last Dollar," and requests the examiner to mark the play-bill for identification and

the examiner marks it "Daly *vs.* Webster *et al.*, April 4, 1890, J. G. S., examiner."

Defendants' counsel also refers to thirty-two play-bills of the same play of performances given for thirty-two subsequent evenings and Saturday matinees, excluding Saturday and Sunday evenings.

20 Int. Please examine the bills to which I have referred and state whether they contain the announcement of the performance of "The Last Dollar, in four quarters, a current coinage by J. S. Jones," with cast of characters.

Objected to as immaterial, irrelevant and incompetent and calling for the contents of a writing.

A. Yes, sir.

21 Int. I show you a book in manuscript, endorsed "Cata-
281 logue of books and MSS., library of Boston museum, 1865," and ask whether you produced that book.

Ans. I did.

22 Int. Did you verify the list of plays mentioned in that book and, if so, state in what manner you verified it and when?

Objected to as immaterial and irrelevant and leading.

Ans. This catalogue was made by Mr. Fred. Williams, who was the stage manager of the Boston museum, in 1865. When he left the museum the catalogue came into my possession. In 1880 I revised and corrected this catalogue. In looking over the list of the plays, when I found any play or manuscript in the library, I looked at this catalogue to see if the play was there, and I marked this so as to know that it is in the library.

Defendants' counsel asks to have the catalogue referred to marked for identification, and it is marked "Daly *vs.* Webster *et al.*, April 4, 1890., J. C. S., ex'r."

23 Int. I notice in this catalogue, under the letter L, the letters "MSS.," and then in the list the words "Last Dollar 1," and ask who placed the figure 1 opposite the words "Last Dollar," and what it was intended to represent?

Objected to as immaterial and incompetent.

Ans. I did it, and to know positively whether the copy of that play was in the library, or at least it was a proof that there was a copy of that play in the library.

24 Int. Would it in any way indicate whether there was more than one play of that title in the library?

Same objections, and as leading.

Ans. There is only the one play. If there were more than
282 one play there would be two or three marks to indicate the number, but, being only one mark, there is but the one manuscript. The piece was never published.

25 Int. From where did you get this manuscript which has been produced, "The Last Dollar"?

Ans. From the Dramatic Library of the Boston Museum.

Defendants' counsel asks the examiner to mark the manuscript for identification, and, being in four parts, each part is marked accordingly "Daly *vs.* Webster *et al.*, April 4, 1890, J. G. S., ex'r," and the parts are numbered 1, 2, 3 and 4; and defendants' counsel offers the same so marked in evidence, and the same are marked "Defendants' Exhibit 'The Last Dollar,' J. G. S., ex'r," and numbered 1, 2, 3 and 4.

Counsel for complainant consents that the examiner may annex and return with this evidence a copy of the third and fourth parts of the above exhibit in place of the original, and need not return the first and second parts.

Counsel for complainant objects to the introduction of the manuscript in evidence as immaterial, irrelevant and incompetent.

Defendants' counsel offers in evidence programme of Monday evening, September 16, 1850, of the play of "The Last Dollar," at the Boston museum, heretofore marked for identification.

Complainant's counsel objects to the introduction of this programme in evidence as immaterial, irrelevant, and that no foundation is laid for offering this paper, and, not waiving these objections, consents that a copy thereof may be made by the examiner and marked "Defendants' Exhibit Programme of September 16, 1850, J. G. S., examiner," and returned in place of the original.

Defendants' counsel offers in evidence the thirty-two programmes of the Boston museum of the play of "The Last Dollar," to
283 and including that of October 26, 1850, heretofore identified by the witness, and complainant's counsel objects to the same as immaterial, irrelevant and incompetent, and not waiving these objections, admits the bill of "The Last Dollar," appears in each of these programmes substantially the same as in Defendants' Exhibit Programme of September 16, 1850, and it is agreed that these last-mentioned thirty-two programmes need not be returned with the evidence in this case.

Defendants' counsel offers in evidence, page marked "L, MSS." of catalogue of books and manuscripts heretofore marked for identification, and complainant's counsel objects to the same as immaterial, irrelevant and incompetent, and that no foundation is laid, and, not waiving these objections, consents that a copy of said page may be returned by the examiner in place of the original and marked "Exhibit Page L, from Catalogue of Museum, J. G. S., ex'r."

The witness says: I want to retract one thing. I said the piece was never published. I should have said, I am under the impression it was not published.

Cross-examination by STEPHEN H. OLIN, Esq., of counsel for complainant:

26 X Int. Do you remember seeing this manuscript at any time before you examined the catalogue in 1880?

A. I do not remember, but I most positively have seen it.

27 X Int. What do you mean by that?

Ans. Well, having to look over my library so often.

28 X Int. When do you next remember seeing it after 1880?

Ans. 1887.

29 X Int. On what occasion?

Ans. Revising the catalogue in 1887.

284 30 X Int. When next do you remember seeing it after 1887?

Ans. When I was asked if I had a copy of "The Last Dollar" in the library, by Mr. Davenport in December, 1889, or January, 1890.

31 X Int. On the occasion of examining and revising the catalogue, what examination did you make of this manuscript?

Ans. Nothing more than to know that I had it in the library.

32 X Int. During the years that you have had charge of the library, has any other person had access to it?

Ans. Yes, sir.

33 X Int. Who else?

Ans. The manager and the stage manager.

34 X Int. About how many books and manuscripts are contained in that library?

Ans. That I cannot tell.

35 X Int. Are there several hundreds?

Ans. To the best of my knowledge there are.

36 X Int. Can you tell if there are five hundred?

Ans. Yes, sir.

37 X Int. Are there as many as seven hundred?

Ans. Yes, sir.

38 X Int. Are there as many as a thousand?

A. Yes, sir.

39 X Int. Are there as many as fifteen hundred?

Ans. I cannot tell, but to the best of my knowledge there are even more than fifteen hundred.

Direct examination resumed:

40 Int. In fixing the number of plays, do you include printed books as well as manuscripts?

Ans. Yes, sir.

41 Int. About how many manuscripts are there?

Ans. I cannot tell.

42 Int. Are they under lock and key?

Ans. Yes, sir.

43 Int. You stated, in answer to cross-ints. 26 and 27, that
285 you examined the catalogue in 1880, when you saw this manuscript, but must have seen it before in looking over the library. Please explain what you mean by those answers fully.

Ans. Well, in looking for a manuscript in the letter L, I must have seen it.

44 Int. Then, as I understand you, you mentioned the year 1880, because you had before you, to call to your recollection, catalogue of which page L has been put in evidence; is that so?

Objected to as immaterial and leading.

Ans. Yes, sir.

45 Int. And is that the year you made the comparison?

Ans. Yes, sir.

46 Int. Was the manuscript in question one of those manuscripts which were added by you to the library during the period you had charge thereof?

Ans. No, sir.

J. R. PITMAN.

Attest: JOHN C. STETSON, *Examiner.*

Defendants call FREDERICK W. MOZART, who being duly sworn to testify the truth, the whole truth and nothing but the truth, deposes as follows:

Deposition of Frederick W. Mozart.

BOSTON, *April* 4, 1890.

Direct examination by DAVID GERBER, Esq., of counsel for defendants:

1 Int. State your name, age, residence and occupation.

Ans. Frederic- W. Mozart; sixty-six: Jamaica Plain,
286 Mass.; master machinist at theatres and theatrical builder. I am not at present at any occupation, through sickness.

2 Int. Were you at any time connected with the Boston museum, and, if so, in what capacity and during what period?

Ans. I was from, I think, about November, 1846, to the summer of 1864 or '5 in the capacity from gas engineer and assistant machinist to master machinist.

3 Int. During the time that you were employed at the Boston museum state whether the play entitled "The Last Dollar," by J. S. Jones, was produced at that theatre.

Objected to as immaterial and irrelevant.

Ans. It was.

4 Int. Do you know about when?

Same objections.

Ans. I couldn't say; only that I have heard from the book that it was in 1850, but I couldn't state from my own memory; only I know that it was in the first years of the museum.

5 Int. Do you mean the book referred to by the last witness, Pitman, containing the play-bills of the Boston museum of 1850 and 1851?

Same objections.

Ans. I do.

6 Int. Independently of the book, does your memory serve you

sufficiently to state whether it was produced several years before you severed your connection with the theatre?

Same objections.

Ans. It does. It was produced during the first years of my connection with the Boston museum.

287 7 Int. Do you remember whether the play as produced contained the scene of a railroad?

Same objections.

Ans. It was produced with a railroad.

8 Int. As an employee of the theatre, did you have anything to do with the construction or placing of that scene; and, if so, state what?

Same objections.

Ans. I did, as an assistant, in working the train at any and all times necessary.

9 Int. I call your attention to drawing in the third act of the manuscript of "The Last Dollar," found on page 48, and ask whether that is a correct drawing of the scene as played in that play?

Same objection, and that no foundation is laid, and as leading and improper in form.

Ans. This is a very crude affair, of course, but it gives a very good idea of the scene. These pen-and-ink sketches are merely for the prompter and stage manager to see if the scene is somewhere near correct.

10 Int. Kindly describe the railroad scene as produced in "The Last Dollar" at the Boston museum as nearly as you can remember.

Objected to as immaterial, irrelevant and incompetent.

Ans. Well, at this late day, it is, of course, impossible to give the exact description of the scene, but I remember perfectly the railroad part and the running of the cars over the rails, which (the cars) were telescopic, that they might be run out of sight in the entrance.

11 Int. Do I understand by your last answer that the train crossed the stage in view of the audience?

Same objections.

288 Ans. It did.

12 Int. Do you now remember whether one of the characters in the play was supposed to have been laid across the track and run over by the train?

Same objections and as leading.

Ans. To the best of my memory at the present time, there was what we call a dummy representing the character, across the track, supposed to be run over. If called for in the plot it was sure to

be there. To the best of my memory the dummy was across the track.

13 Int. Did you have at any time prior or during the run of the play at that theatre the manuscript of the play?

Same objections.

Ans. I think not.

14 Int. Can you state when Selwyn's theatre was opened?

Ans. It was opened in October, 1867; I can't state the date, but I have the bill of the opening night, but not with me.

15 Int. Are you in any way related to any of the defendants in this action—George P. Webster, William A. Brady or Henry C. Miner?

Objected to as immaterial and irrelevant.

Ans. I never, to my knowledge, ever saw or spoke to either of the gentlemen till this morning.

No cross-examination.

F. W. MOZART.

Attest: JOHN G. STETSON, *Examiner.*

289 Defendants call SUSAN M. REMICK, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as appears in and by the following deposition:

Deposition of Susan M. Remick.

BOSTON, *April* 4, 1890.

Direct examination by DAVID GERBER, Esq., of counsel for defendants:

1 Int. Please state your name, age, residence, and occupation.

Ans. Susan Mason Remick; but I am known as Susan Mason at the Boston museum; sixty-eight; Boston, Mass.; seamstress or wardrobe-keeper at the Boston museum.

2 Int. Were you, in 1850, employed in the Boston museum as an actress, and, if so, state what your stage name was?

Ans. I was employed there, but I can't say I was much of an actress; my stage name was Susan Mason.

3 Int. I show you programme in evidence of "The Last Dollar," performed at the Boston museum September 16, 1850, and ask whether the character Mary Watts was played by you in the cast?

Objected to as immaterial and irrelevant.

Ans. It was.

4 Int. Did the play have a successful run, if you remember?

Same objections.

Ans. Yes; but not as successful as former and later ones of Dr. Jones.

5 Int. Do you remember whether it was performed several consecutive weeks?

Same objections.

290 Ans. About five weeks.

6 Int. Do you remember whether, as produced, there was a railroad scene in the play?

Same objections and as calling for a conclusion.

Ans. I do distinctly; there was.

7 Int. Do you remember whether a train of cars crossed the stage in view of the audience?

Objected to as immaterial and irrelevant.

Ans. Yes, sir; it did.

8 Int. Do you remember whether, in the play as produced, one of the characters was supposed to have lost his life through the train passing over him?

Same objections and as calling for a conclusion, and as leading.

Ans. That I do not remember clearly. There were so many on the stage at the time, and my attention was called to the passing of the cars, and I cannot state positively as to what you ask. I have a dim remembrance of their saying "A man on the track," but that is so dim I don't like to give it as clear.

9 Int. You say in your last answer you have a remembrance of their saying "A man on the track." Do you mean in the play?

Objected to as leading.

A. Yes.

S. M. REMICK.

Attest: JOHN G. STETSON, *Examiner.*

291 DEFENDANTS' EXHIBIT PROGRAMME OF SEPT. 16, 1850.
J. G. S., Examiner.

Eighth Season — BOSTON MUSEUM. — No. 43.

TREMONT STREET, BETWEEN COURT AND SCHOOL STREETS.

TIME ALTERED.

NOTICE.—On and after Monday, Sept. 16, doors of Exhibition Room will be open at 6; Curtain will be raised at 7 o'clock precisely.

Museum open from 8 a. m. to 10 p. m. Exhibition Room open at 6; Performances commencing at 7 o'clock precisely. Admission to Museum and Entertainment 25 cents. Children under 12 years of age 12½ cents. Reserved Seats 50 cents.

STAGE MANAGER, W. H. SMITH. | MUSICAL DIRECTOR, T. COMER.

EVERY EVENING THIS WEEK!

First Nights of the New Local Domestic Play,

Written expressly for the Museum by Dr. J. S. Jones,

THE LAST DOLLAR,

IN FOUR QUARTERS.

New Local Scenery by Messrs. H. Hillyard and Geo. Curtis.

292 Engagement of

GENERAL TOM THUMB,

The World-Renowned and Celebrated

MAN IN MINIATURE,

WEIGHING ONLY 15 POUNDS!

EIGHTEEN YEARS OF AGE AND BUT TWENTY-EIGHT INCHES HIGH!

Who has been received with the highest marks of Royal favor by all the PRINCIPAL CROWNED HEADS OF EUROPE, and who has performed before SEVEN MILLIONS OF PERSONS during the past year, is engaged, and will appear every AFTERNOON AND EVENING.

MONDAY EVENING, SEPTEMBER 16, 1850.

And Every Night This Week.

The Performances will commence with the Overture..... .....Lestocq

Arranged by T. Comer.

After which will be performed the serio-comic Burlesque, interspersed with Songs, Duets and Choruses, called

BOMBASTES FURIOSO!

GEN. BOMBASTES.....GEN. TOM THUMB

King Artaxomines	Mr. Curtis	Drummer	Palmer
Fusbos, Minister of State	Whitman	Fifer	G. H. Finn
1st Courtier	J. P. Price	Guards, Soldiers, &c.	
2d Courtier	Bradley	Distafina	Miss A. Phillips

293 FAVORITE DANCE.....MISS ARVILA

IRISH LILT ....MASTERS PHILLIPS & ADRIAN

Previous to the Local Play, Overture..... Native Land

Arranged by T. Comer.

To conclude with the New, Local, Domestic Drama, written expressly for this Establishment, entitled

THE LAST DOLLAR!

IN FOUR QUARTERS!

A CURRENT COINAGE..... ....BY J. S. JONES.

Mr. Chamford, a financier	Mr. Curtis	Walkins	Palmer
Horatio Chamford, his son	J. A. Smith	Police, Watchmen, Citizens, &c., by	Auxiliaries
Peter Rambouiller, an old Frenchman, dealer in fruit	Warren	Mrs. Rambouiller	Mrs. Judah
The Astrologer	W. H. Smith	Louise	Miss L. Gann
Belkins, Tom Flanger. Engineers	Whitman, Keach	Miss Bidaway, not an unusual character	Mrs. Thoman
Mr. Watt	Bradley	Miss Perulia Pettengill Peas, from Kittery, Maine	Miss A. Phillips
Peletiah Peabody Patch, from Vermont	Mestayer	Bridget Mulligan	Miss Thompson
Paul Derby, a young engineer	Thoman	Mrs. Larkin	Miss Rees
London Jim, a cabman	J. P. Price	Mary Watts	Miss Mason
Will Evans	Master Phillips	Jenny Wilson	Miss Arvilla
Wrightman, a police officer	J. L. Munroe	Miss Slider	Miss Whiting
Gurner, mate of a schooner	G. H. Finn	Ladies, Servants, &c.	
George	Master Adrian	Miss- Evans, Christie, Williams, &c.	
Clerk	Harris		

294 In the course of the Play, the following New Local Scenery:

Street and Buildings near Dock Square. Revere House and Bowdoin Square. Railroad Exchange, east side Boston Museum. Fitchburg Depot and part of Causeway Street. West View of the Fitchburg Railroad and Depot from Maine Railroad. Moonlight.

WEDNESDAY AFTERNOON, THE COMEDY,

MY SISTER KATE, BOMBASTES FURIOSO,

General Bombastes ....General Tom Thumb

and the farce,

STATE SECRETS.

Omnibusses—Hobbs and Prescott's Washington Street Line of Omnibusses leave the Museum every evening at the close of the Performance. Fare, 12½ cents.
Also Coaches for Roxbury and South Boston.

Hooton's Press, No. 10 Haskins' Building, corner of Tremont and Howard Streets.

295 EXHIBIT PAGE L FROM CATALOGUE OF MUSEUM. J. G. S., Ex'r.

(L.)

MSS.

Loaves and Fishes 1,
Lurline 2,
Love and Ambition 1,
La Fiamina,
Last Days of Pompeii 1,
Last Dollar 1,
Last of the Kings 1,
Love Laughs at Locksmiths 1,
Lord Timothy Dexter 1,
Lost Letter 1,
La Femme Soldat 1,
Lost in London 1,
Lancashire Lass 1,
Love's Doctor 1,
Lady Audley's Secret,
Led Astray 1,
Land at Last 1,
Long Strike 1,
Little Emily 1,
Lady Clara 1,
L'Orange d'Or 1,
Love's Intrigues 1,
Love's Young Dream,
Lemons.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, John G. Stetson, a United States commissioner, appointed by the circuit court of the United States of America in and for the district of Massachusetts, first circuit, and examiner in the foregoing-entitled cause of Augustin Daly, complainant, *vs.* George P. Webster *et al.*, defendants, pending in the circuit court of the United States for the southern district of New York, duly authorized and empowered to take such evidence as might be adduced by
296 defendants before me, to be used in said cause, which evidence is hereto prefixed, do hereby certify that on the first day of April, 1890, and by adjournment therefrom on the fourth day of April, 1890, I was attended at the office of the clerk of the circuit court of the United States, 112 Post-office building, in Boston, in said district of Massachusetts, by the counsel for the respective parties to said cause, and by the several witnesses, to wit: James R. Pitman, Frederic W. Mozart, Susan M. Remick; that each of said witnesses, being of sound mind and lawful age, was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and was then carefully examined; and the said witnesses did thereupon depose as appears in the foregoing depositions, which depositions were reduced to writing in the presence of the said witnesses, and when completed were read over to the said witnesses, and signed by them as and for their respective depositions, in my presence.

I return herewith the following exhibits put in evidence before me: "Defendants' Exhibit Programme of September 16, 1850, J. G. S., ex'r," "Exhibit Page L, from Catalogue of Museum, J. G. S., ex'r," and "Defendants' Exhibit 'The Last Dollar,' J. G. S., ex'r," parts numbered 3 and 4.

I further certify that I am not of counsel or attorney to either of the parties in said cause, nor in any way interested in the event thereof.

I further certify that in the taking of said evidence I have complied in all respects with the requirements of the 67th rule in equity, as amended, of the Supreme Court of the United States, and I herewith transmit said evidence under my seal to the clerk of the court in which said cause is pending. I have retained said evidence to this date to make the necessary copies to be annexed as exhibits.

In testimony whereof, I have hereunto set my hand and seal this 29th day of April, A. D. 1890.

JOHN G. STETSON,
United States Commissioner, District of Massachusetts, Examiner.

[SEAL.]

297 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE F. WEBSTER, WILLIAM A. BRADY, Impleaded, &c.

Notice is hereby given that we shall proceed to take proofs for final hearing on the part of the defendants under the sixty-seventh rule of the Supreme Court for courts in equity as amended, and in accordance with the statutes in such case made and provided, and in pursuance of the rules and practice of this court, before Charles S. Bundy, Esquire, a United States commissioner and an examiner of this court (or other proper officer under said statutes and rules), at his office, No. 458 Louisiana avenue, in the city of Washington, District of Columbia, on the 26th day of May, 1890, at ten o'clock in the forenoon.

You are notified to attend and cross-examine any witnesses produced.

The examination will be adjourned from day to day and to such time and place as may be required without further notice.

The names and residences of the witnesses who live at a greater distance from the place of trial than one hundred miles whom it is intended to examine are as follows: A. R. Spofford, residing at Washington, District of Columbia.

Dated New York, 13th May, 1890.

A. J. DITTENHOEFER,
Solicitor for Defendants.

Office and post-office address, 96 Broadway, New York city.

To Messrs. Olin, Rives & Montgomery, complainant's solicitors, Mutual Life Ins. building.

298 Circuit Court of the United States, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded.

Deposition taken for and on behalf of defendants before Charles S. Bundy, United States commissioner, at the office of A. R. Spofford, Librarian of Congress, in the Capitol building, on Monday, May 26th, 1890, at 10 a. m.

Present: A. J. Falls, for defendants, and John C. Clark, for plaintiff.

Pursuant to notice served by defendants to plaintiff in the case of Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded, &c., service of notice duly acknowledged, we appeared this morning to take the testimony of A. R. Spofford, Librarian of Congress.

The meeting was appointed at ten o'clock, at the office of Mr. Charles S. Bundy, United States commissioner, but by request of Mr. Spofford it was adjourned to the office of the Librarian of Congress.

It is stipulated by the counsel that the testimony may be taken by a stenographer, and considered as taken by commissioner in person.

299 A. R. SPOFFORD, witness, called on behalf of defendants, being by me first duly sworn, testified as follows:

By Mr. FALLS:

1 question. What is your name, age, residence and occupation?

Answer. Ainsworth R. Spofford; residence Washington; occupation, Librarian of Congress; age, sixty-four.

2 question. How long have you been Librarian of Congress?

Answer. Since December, 1864.

3 question. Is the paper now shown you (marked Defendants' Exhibit 1, for identification) signed by you, and does it contain the seal of your office?

Answer. Yes; to both questions.

4 question. Is such certificate a true certificate as shown by the records of your office?

Counsel for plaintiff objected on account of question being immaterial, incompetent and irrelevant.

Answer. It is.

5 question. Is that exhibit, commencing "Southern district of New York," down to and including "Geo. F. Betts, clerk of the district," a true copy of the whole of the original record of copyright in the district records on file in your office?

Counsel for plaintiff objected on the same grounds as to former question.

Answer. It is, with the exception that there follows after the signature of Geo. F. Betts a memorandum, reading: "Work deposited this first day of August, 1867;" and whether it is legally part of the record—not being before the signature of the clerk but a memorandum after that signature, partly in print, I cannot tell.

300 6 question. Have you on file in your office the title of the book or dramatic composition, the title of which is in the following words, to wit: "Under the Gaslight; a romantic panorama of the streets and homes of New York," referred to in said exhibit?

Counsel for plaintiff objected on the same grounds as to former questions.

Answer. I have not.

Question 7. Did you ever, so far as you personally know, have on file in your office the said title of said book or dramatic composition?

Counsel for plaintiff objected upon the same grounds as hereto-

fore, and upon the grounds of the impossibility of Mr. Spofford being familiar with all the multitude of the books in the library.

Answer. I never saw it.

8 question. Have you on file in your office any work deposited with the clerk of the district court for the southern district of New York by Augustin Daly or on his behalf on the 1st day of August, 1867, entitled "Under the Gaslight; a totally original and picturesque drama of life and love in these times;" my question refers to a work, book or composition deposited with the clerk of the district court of the United States for the southern district of New York?

Counsel for plaintiff objected to this question as leading, incompetent, irrelevant and immaterial, and further, on the ground that it has not been shown that he (Mr. Spofford) has any knowledge of the books deposited in the clerk's office in New York.

Answer. I have no copy of the book described which was received either from the clerk of the southern district of New York or from the Patent Office on the transfer of the copyright bureau to my office in 1870, but I have a copy of the book so described deposited in my office on September 26th, 1867, pursuant to law.

301 9 question. Have you ever had on file in your office such a work claimed to have been deposited with said clerk of said district court?

Counsel for plaintiff objected to this question on the same ground as the last preceding question.

Answer. I have not.

10 question. Do you personally know whether any work, book or dramatic composition was filed on the 1st of August, 1867, by or on behalf of Augustin Daly, with the clerk of the United States district court for the southern district of New York, known by said title, or by the title, "Under the Gaslight; a romantic panorama of the streets and homes of New York"?

Objected to by counsel for plaintiff, as it is not shown that Mr. Spofford has any reason for knowing anything about the books or works deposited in the clerk's office at New York.

Answer. I have no personal knowledge or other knowledge, except by inspection of the clerk's records already testified to.

11 question. Do the files of your office contain any such work, book or dramatic composition asserted to have been deposited with the said clerk of the said district court?

Counsel for plaintiff objected upon the same grounds as heretofore.

Answer. As I before testified, I have a copy of a drama answering to that title deposited in my office September 26th, 1867, as required by the copyright laws then in force.

Cross-examination by Mr. J. C. CLARK, counsel for plaintiff:

302 1 question. Have you in your possession all the books deposited with the clerk of the district court for the southern district of New York?

Counsel for defendants objected to the question as immaterial, irrelevant and incompetent.

Answer. I have not, because large numbers of the books deposited in New York never reached Washington, and upon the transfer of the copyright material from the Patent Office to my office pursuant to the act of 1870 there were many books retained by the Patent Office.

2 question. Have you these records of the clerk of the United States court for the southern district of New York in your possession?

Objected to by counsel for the defendants on same grounds as heretofore.

Answer. Yes, I have.

3 question. In these records is there underneath the signature of George F. Betts, on the various pages of the record memoranda similar to the memorandum mentioned above by you?

Objected to by counsel for the defendants as irrelevant, &c.

Answer. There is a printed form or memorandum at the end of each page, as follows: "Work deposited *deposited* this — day of ——, 186–," which printed memorandum is filled up by a written record of the copy deposited on a certain month of the day or year 186–.

4 question. Have you any other record of books deposited with the said clerk?

Objected to by counsel for defendants upon the same grounds.

Answer. None whatever.

A. R. SPOFFORD.

303 DEFENDANTS' EXHIBIT 1, C. S. B.

SOUTHERN DISTRICT OF NEW YORK, *To wit:*

No. —.

Be it remembered, that on the first day of August, anno Domini 1867, Augustin Daly, of the said district, has deposited in this office the title of a book or dramatic composition, the title of which is in the following words, to wit:

1213 [POST FREE (In Great Britain only.)] 6d. OR 15 CENTS.

FRENCH'S ACTING EDITION
(Late LACY'S).

SCAMPS OF LONDON

No 2.65 Habits Loose & Dty

LONDON:
SAMUEL FRENCH,
PUBLISHER,
89, STRAND.

NEW YORK:
SAMUEL FRENCH & SON,
PUBLISHERS,
88, EAST 14TH STREET.

ABERDEEN—W. LINDSAY, 30, Market Street.
BATH—S. J. COOK, The Civet Cat, 4, Abbey Churchyard.
BELFAST—JAMES MOORE, Cheapside.
BIRMINGHAM—J. GUEST, 52, Dull Street.
BRADFORD—J. MORGAN, 1, Dale Street.
BRISTOL—E. TOLEMAN, 2, Rupert Street.
CORK—W. J. MURRAY, 90, George's St.
DUBLIN—J. WISKHART, 23, Suffolk St.
EDINBURGH—H. ROBINSON, 11, Greenside St.
GLASGOW—WM. LOVE, 226, Argyle Street.
LEEDS—G. RAMSDEN, 13, Vicar Lane.
LIVERPOOL—BURKINSHAW, 10, Copperas Hill.
MANCHESTER—JOHN HEYWOOD, 143, Deansgate.
NEWCASTLE-ON-TYNE—THOMAS ALLEN, 36, Collingwood St.
PLYMOUTH—A. BURNELL & Co., 2, Mount Pleasant.
PORTSMOUTH—BURROWS & Co., 97, High Street.
SHEFFIELD—GEO. SLATER, 54, Snighill.
BOMBAY—THACKER, VINING & Co.
CALCUTTA—THACKER, SPINK & Co.
CANADA—R. B. BUTLAND, Toronto.
CAPE OF GOOD HOPE—J. C. JUTA, Cape Town.
MELBOURNE—CHARLWOOD, 74, Elizabeth Street. C. MUSKETT, 78, Bourke Street, E.
ADELAIDE, S.A.—E. S. WIGG & SON.
NEW ZEALAND—J. BRAITHWAITE, Dunedin. G. T. CHAPMAN, Auckland. W. M. STANTON, Nelson.
SYDNEY—F. KIRBY, 228, Pitt St.

(By Order) of all Booksellers in England and Colonies.
NEW DESCRIPTIVE CATALOGUE SENT POST FREE.
NO BOOKS EXCHANGED.

MAKE-UP BOX.—Contains everything necessary for Making-Up the Face. Price in Fancy Card-Board Boxes, 18s., Elegant Tin Cases, 21s. (See Catalogue.)

MAKE-UP BOOK.—"HOW TO MAKE-UP" A Practical Guide for Amateurs, with Twenty-Three Colored Illustrations. Price Two Shillings.

GREASE PAINTS.—The best articles in use for "Making-Up." Sold in neat Tin Cases, with full instructions, all colors, 3s. per box, single sticks 6d. (See Catalogue.)

FRENCH'S ACTING RIGHTS.—Managers and Amateurs.—Apply to J. Palgrave Simpson, Dramatic Author's Society, 28, King Street, Covent Garden.

UNDER THE GASLIGHT;

A Romantic Panorama of the Streets and Homes of New York,

BY

AUGUSTIN DALY,

Author of "Leah the Forsaken," "Griffith Gaunt," "Taming a Butterfly," &c.

The right whereof he claims as author and proprietor in conformity with an act of Congress, entitled "An act to amend the several acts respecting copyright."

GEO. F. BETTS,
Clerk of the District.

I, A. R. Spofford, Librarian of Congress, hereby certify that the foregoing is a true copy of the original record of copyright in the district court records on file in my office.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of my office this 27th day of January, 1890.

A. R. SPOFFORD,
Librarian of Congress.

304 (Endorsement on exhibit:)

DEFENDANTS' EXHIBIT 1, C. S. B.

At the execution of a commission for the examination of witnesses between Augustin Daly, plaintiff, and George P. Webster and William A. Brady, defendants, this paper-writing was produced and shown to A. R. Spofford, and by him deposed unto at the time of the examination before—

CHARLES S. BUNDY,
Commissioner.

UNITED STATES OF AMERICA
District of Columbia, City of Washington, } *To wit:*

I, Charles S. Bundy, a United States commissioner in and for the District of Columbia, do certify that Ainsworth R. Spofford personally appeared before me on the 26th day of May, at 10 o'clock a. m., in the city of Washington, D. C., and after being duly sworn to testify the truth, the whole truth and nothing but the truth, did depose to the matters contained in the foregoing deposition; and after the same had been transcribed in longhand he did, in my presence, read the same and subscribe his name thereto and did endorse the exhibit annexed thereto; and I further certify that I have subscribed my name to each half sheet thereof and to each exhibit; and I further certify that John C. Clark, Esq., appeared in behalf of the plaintiff and A. J. Falls, Esq., appeared in behalf of the defendant.

Witness my hand and official seal this May 27th, 1890.

CHARLES S. BUNDY, [SEAL.]
U. S. Commissioner, D. C.

(Here follows title page of "Scamps of London," marked p. 305.)

306

THE

SCAMPS OF LONDON;

OR, THE

CROSS ROADS OF LIFE!

A Drama of the Day,

IN THREE ACTS.

Adapted from the French.

W. J. MONCRIEFF,

AUTHOR OF

Tom and Jerry, Spectre Bridegroom, Bashful Man, Cataract of the Ganges, Eugene Aram, Lear of Private Life, Somnambulist, Van Dieman's Land, Court of Queen Anne, Green Dragon, Hag of the Glen, Heart of London, John Adams, How to take up a Bill, Latude Lochinvar, Man Wolf, Monk's Cowl, One Fault, Parson's Nose, Lost Life, Sam Weller, Mistress of the Mill, Wagoner of Westmoreland, What's in a Name? Peer and the Peasant, Monsieur Tonson, Cheque on my Banker, &c., &c., &c.

LONDON:
SAMUEL FRENCH,
PUBLISHER,
89, STRAND.

NEW YORK:
SAMUEL FRENCH & SON,
PUBLISHERS,
38, EAST 14TH STREET.

307 *First Performed at the Theatre Royal Sadler's Wells, on November* 13, 1843, *an entirely new National, Local, Characteristic, Metropolitan, Melo-dramatic Drama of the day, in Three Acts, correctly exhibiting Life and Manners in innumerable novel and interesting phases, called The*

27—265

SCAMPS OF LONDON;

OR, THE

CROSS ROADS OF LIFE!

The Groundwork of the Drama is founded on the celebrated Play, "LES BOHEMIENS," *and applied to the circumstances and realities of the present moment, by the Author of "Tom and Jerry," &c.*

The New Scenery, (from actual authorities) by Mr. F. FENTON and Assistants. The New Flash Medley Overture, and Slang Dramatic Music, by Mr. W. MONTGOMERY. The action of the Piece arranged by Mr. C. J. SMITH. The Dresses by Mr. HAMPTON and Miss BAILEY. The whole produced under the direction of Mr. H. MARSTON.

LIFE, whether high or low, however it may vary in costume, is essentially the same in all countries. The BOHEMIAN and TRUAND of Paris find their counterparts in the GREEK and SCAMP of London:—The Terminus of the Birmingham Railway presents much the same scenes as the DEPOT DES MESSAGERIES, Rue Notre Dame des Victoires; and the Dry Arches of Waterloo Bridge, have their parallel in the Barges and Arches of PONT ST. MARIE, on the Seine:—The ESTAMINET DES GEUX, of the MARAIS, is kept in countenance by the Rat's Castle, of the Rookery, Dyot Street, St. Giles's, now happily demolished; while the Gardens of the CHATTE AMOREUSE, and the CARRIERE DE MONT MARTRE, are but other names for the many Pleasure Gardens and Saloons of our suburbs, and the Brick fields in their vicinity. Without servilely copying his original, the Adapter (or Author, or whatever he may be called) of the present piece, has suffered his Gallic precursors to point out to him similar scenes in his own time and country, which, from personal knowledge, he trusts he has been enabled to sketch with a truth and effect, which,

GEORGE P. WEBSTER ET AL. VS. AUGUSTIN DALY. 209

308 while it amuses, may not altogether fail to instruct. In a word, he has endeavored to draw a "moral," at the same time he hopes he has "adorned a tale."

Let no one be startled at the Revelations of this Drama:—As Byron has justly remarked, "NE VRAI N'EST PAS TOUJOURS LE VRAI SEMBLABLE."—Fact has in no instance been exaggerated for the sake of effect.

DEVEREUX, *alias* FOX SKINNER *alias* —— ——	a Swell Cove out of luck, King of all the Scamps and Greeks in London	Mr. H. MARSTON
MR. DORRINGTON	(a wealthy Liverpool Merchant, on a visit to London)	Mr. ROMER
FRANK DANVERS	(a British Naval officer, just arrived from the Indies)	Mr. BIRD
HERBERT DANVERS	(his Younger Brother, a ruined Roue, pigeoned by the Greeks)	Mr. MELVIN
MR. HAWKSWORTH SHABNER	Principal Proprietor of a Silver Hell at the West End, Director of a Company—Capital One Million, Bill Discounter, and Anythingarian where there's anything to be got	Mr. P. WILLIAMS
BOB YORKNEY	(the Duffer, tired of the Lay)	Mr. W. H. WILLIAMS
TOM FOGG, *alias* OLD DEADY, *alias* THE ANIMAL, *alias* THE SAVAGE, *alias* —— ——	a Gin-drinking Vagabond suffering under delirium tremens	Mr. C. J. SMITH
NED BRINDLE	(the Magsman—a Half-and-half Cove)	Mr. CORENO
JOE ONION	(the Crocodile—an Out-and-out Cove, Cadger and Creature of Devereux's)	Mr. C. FENTON
DICKEY SMITH	the "Wakeful Bird," a young gentleman in no ways perticklar to a shade, picking up a living how he can	Master G. MASKELL
IKEY BATES	Landlord of Rats' Castle, otherwise the Dyot-street Hotel, Proprietor of twenty two-penny dabs and a most respectable Bagatelle Board, having cut bumble-puppy as too low	Mr. LAMB
Waiter at the "Cat and Bagpipes" Tavern, Mr. SMITHSON.		Inspector of the X Y Z Division, Mr. FRANKS
LOUISA	(the Victim of an ill-requited attachment)	Miss CAROLINE RANKLEY
MISS CHARLOTTE WILLERS	a young Lady with her Cat, &c., from the Country, betrothed to Mr. Yorkney, amusing her leisure hours in shoe-binding, waistcoat, and gaiter making	Mrs. R. BARNETT
MISS DORRINGTON	(Daughter of Dorrington)	Miss STEPHENS

The New Scenery by Mr. W. F. Robson and Assistants. Machinery by Mr. James. New Medley Overture and Music to the Drama, by Mr. Leonard Giorgi. The Piece Produced under the Superintendence of Mr. Frederick Marchant.

THE SCAMPS.

FOX SKINNER	*alias* Devereux, *alias* "the Swell"—a true specimen of villainy, one of the real Scamps of London	Mr. HOWARD RUSSELL
Mr. HAWKSWORTH SHABNER	a Money-lender, whose only thought is self—a lover of Mammon, and a Scamp in Sheep's clothing	Mr. M. ROBERTS
BOB YORKNEY	an indescribable, living by his wits, an unlicensed importer of fine Havannahs—his heart in the right place, a Scamp from necessity, not inclination	Mr. FRED. WRIGHT
JOE ONION	a Night Bird, Sole Monarch of Waterloo Bridge, a knowing one, who pays neither rent nor taxes—a long-shore Scamp	Mr. J. BRADSHAW
NED BRINDLE	(his companion, one of the tip-top gang—a Scamp of tact)	Mr. J. BAKER
DICK SMITH	whose talents are to be daily appreciated in the public streets—one musically inclined—a Scamp of colour	Mr. J. JOHNS
ICKEY BATES	(owner of a Low Tavern in Bermondsey—a Scamp of business)	Mr. MAYNARD
DRIVER (2900—a Scamp of extortion) Mr. JONAS | POLISH (a Shoeblack—Everybody's Scamp) Mr. JAMES		
JEM and JOE (Fusee Boys—Nature's Scamps) Misses PLATT and HUNT | BEGGAR (a Lazy Scamp) Mr. WEBB		
OLD TOM FOGG	*alias* Deady, *alias* Savage—an old gin-drinking Scamp, kicked about from pillar to post, a man of suffering, the Father of —— ——	Mr. FREDERICK MARCHANT

FRANK DANVERS	formerly a Naval Officer, just returned from India, the enemy of crime and protector of his family honour	Mr. F. THOMAS
HERBERT DANVERS	his Brother, a Gambler and Betrayer, the victim of Devereux and Shabner	Mr. G. CARTER
SHARPE	(X Division, with a sharp eye to duty)	Mr. FLETCHER
Mrs. and Misses WEALTHY	(Railway Passengers)	Mrs. and Miss SAVILLE and Miss WOLFE
CLARKE (a Signalman) Mr. REID	WAITER, Mr. JONES	SERVANT, Mr. WALWORTH
LOUISE	(the Betrayed, abandoned by Herbert Danvers)	Miss MARIE BREWER
CHARLOTTE	(with a partiality for Bob Yorkney, a woman of feeling)	Miss JESSIE FRANCIS

Waterloo Road----View of Southwestern Railway Station, Bridge, &c.

Time, 8 o'clock at Night. *Scamps for the Rail.*

Apartment in an Hotel in Stamford Street.

Scamps in a Tavern.

DRY ARCHES OF WATERLOO BRIDGE,

With the River Thames and part of the Bridge, including the Suicide Arch—by Night.

Scamps at Roost.

The Suicide—Bravery of Frank Danvers—the Night Birds of the River—Heroic Conduct of Old Tom Fogg—Tableau.

Mr. Yorkney's Front Attic in the Pollards, near Tower Street Police Station.

Scamps on the Mend.

Room in an Hotel in the Strand.

Scamps on the Fly Kite Lay.

Well known Public House, and

CONCERT ROOM, NEAR BERMONDSEY.

Introducing Mr. CHARLES STANLEY, the Great Comic Vocalist, from the Oxford and Canterbury Music Halls.

Scamps Enjoying Themselves.

Room in the "IVY" Public House.

DEVEREUX TEMPTS FOGG TO MURDER LOUISA.

LONELY SPOT ON THE SOUTH WESTERN RAILWAY

N. B. The incidents in this scene were suggested by an American Drama.

The Recognition—My Child! Villainy of Devereux—Fogg Wounded!

LOUISA PLACED UPON THE RAILS.

THE MAIL APPROACHES NEARER AND NEARER.

LOUISA SAVED BY FOGG.

The Express Train Dashes Along.

Fearful Death of Devereux. Thrilling Denouement.

312 [*Performance Free.*]

SCAMPS OF LONDON.

Act I.

Scene First.—*Exterior of South Western railway station and view of Waterloo Bridge. Time: Eight o'clock at night. Gates of station,* R. 2 E. *Music:* "Riding on a Donkey," *when scene is well displayed, miniature train passes over railway bridge. Boys calling out,* "Cigar lights, a halfpenny a box," *baked potatoe man, men with boards, policemen, and mob of people pass and repass. Arrangement of this business to be left to the discretion of the stage manager.*

Enter Bob Yorkney, L., *smoking a cigar.*

Bob. Clear the way there, you vagabonds, make room for a gentleman. (*all laugh, he blusters—they retire. At this moment,* Ned Brindle, *showily attired, swaggers down roadway from* R. U. E. Bob *perceives him*) Eh! a swell, perhaps a customer. I'll try him. (*advances mysteriously to* Brindle, *and whispers him aside*) Does your honour want a box of prime Havannah's, vot vill smoke of themselves—or a piece of real Ingy. (*recognises him*) Vot, Ned! No, yes. Vell, I'm blowed!

Ned. (*recognising* Yorkney) What, Bobby! still at the old game, eh? smoked cabbage leaves, rummy Spitalfields wipes.

313 Bob. Yes, Ned—one must do summat for an honest livelihood. Flat catching's considered fair game all the world over, you know; from the very top of St. James's street down to the bottom of St. Giles's.

Ned. Bob, you speak like a horicle—but how goes trade with you? Fast or slow—on the gallop or the grumble, old fellow?

Bob. Vy, trade's not so bad, Ned; there's always a thing called a wictim a popping up, somewhere in London. But you, Master Brindle, may I ask what game you're arter, figg'd out in such spicy feathers as them ere—you ain't surely joined the swell mob, have you?

Ned. Hush, Bobby; I'm exercising my abilities for the exclusive benefit of all her Majesty's loyal subjects in general, and myself in particular. I'm here on the look out and pick up. If I see a stranger arrive by the train I offer my services to trot him about town, get him the best dinner, the best wine, the best bed, in short, take care he wants for nothing.

Bob. Except his blunt.

Ned. No, I'm grown sick of that caper now, old fellow; I've a great mind to turn honest!

Bob. And so have I! cut the Scamp's Club. I would, too, if I could only got a fair chance.

Ned. By vich you means, I suppose, £300 a-year!

Bob. Oh, no, Neddy, I'd be content with anything, so long as a fellow wasn't obliged to be a Scamp, like you and I.

NED. A Scamp, indeed; I scorn the imputation, I work for my living, and that's as much as any other gentleman does.

Enter SHABNER, L. U. E., *disputing with a* CABMAN *about his fare—all accost him, offering their wares. He gets in a passion, at length calls* "police." POLICEMAN *enters,* SHABNER *explains matters, and* POLICEMAN *pushes* CABMAN *off. Crowd disperse.*

SHABNER. (*looking at his watch*) A quarter to eight. Skinner's letter, I beg his pardon, Mr. Devereux, I mean, says he'll be here by the eight o'clock train, so that I'm just in time. (*walks up and down*) Never was a place so infested with vagabonds, as this is. I'll just step into the York hotel, here, and look at the papers to kill time. (*exit.*

BOB. (*comes down stage with* NED, *having been observing* SHABNER) You know that Covey, in course?

314 NED. Not I, my pippin, who is he?

BOB. Not know him? talk of Scamps, indeed! Why, that's the biggest Scamp on town—he's the principal partner in all the silver hells at the West-end, and the managing director of half the swindling societies in London; he lends money, discounts bills, receives stolen goods, is always ready for a plant, and alive to a cross. (*eight o'clock strikes, and bell rings, whistle of engine is heard, and train arrives.* PASSENGERS *enter from station and exit.* POLICEMEN *pass, one sees a tusee-boy trying to pick a pocket, seizes and drags him off, running against an apple woman and upsetting her. When they clear,* FRANK *enters from station, and crossing stage runs against* BOB.)

BOB. Beg your pardon, sir, I didn't see you.

FRANK. But you made me feel you, though, friend. Eh? what my old acquaintance, Robert Yorkney? (*recognising him.*)

BOB. Yes, the werry identical; but surely you can never be the gentleman that's in the East Indies—you can't be my old playmate, whom I so often whopped—you can never be Mr. Frank Danvers!

FRANK. His very self.

BOB. Well, I am amazed—how glad I am. Give us your fist. What can I do for you? Can I clear your trunks—get you a lodging—call you a cab?

FRANK. Thank you, thank you—the same warm hearted fellow as ever. For the present I only require rest. I have just come up from Liverpool, after my return from the East Indies, where my father died.

BOB. What made you go to India? What made you turn sailor?

FRANK. A romantic notion, I confess. Three years since I fell in with a young lady who seemed so good, so pure, that I did not dare to speak of my passion to her. I resolved to make myself worthy of her—to create myself a name. For this purpose I entered the navy, but after a brief service, I returned to my father in the Indies, and closed his dying eyes. Riches beyond my hopes were now my own, and I once more sought England, to lay my fame and fortune at the feet of my Louisa!

BOB. Just as I wish to do to Charlotte. (*aside*) Go on.

FRANK. Judge of my despair when I found that in my absence another had supplanted me, and that she had fled her native place.

315 BOB. The cockatrice! But you can serve the fellow out.

FRANK. Oh, no, I—(*aside*) my brother—my brother! (*aloud*) I cannot revenge myself on him.

BOB. Well, just as you like; but I suppose you've come to London to catch them?

FRANK. No, no, I never told my love; she broke no faith with me. Family affairs alone have brought me here now.

BOB. Come to look after your brother, perhaps? Well, he certainly does want looking after; he played a devil of a game when he came into his property.

FRANK. Ah, Herbert!

BOB. Oh, Lord love you, yes. Horse-racing and gaming into the bargain.

FRANK. Gracious Heavens! What do you tell me? Herbert——

BOB. Hasn't a mag left—not a scuddick; is obliged to live on his wits as much as any of us—dines oftener with Duke Humphrey than anybody else, I believe.

FRANK. Herbert! Herbert!

BOB. He's your brother, Mr. Frank; but there isn't a bigger leg on the whole pavement.

FRANK. (*aside*) And she—Louisa! what's become of her? A prey to want and misery. (*aloud*) I must certainly see this unhappy Herbert. You must conduct me to him.

BOB. That would be rather a difficult matter with a gentleman who lives at number nothing, in nowhere street. But never mind; I rather suspect I shall be in his company before the night is over.

FRANK. And your residence?

BOB. (*hesitatingly*) Why, I—I—just now, I'm living rather *select*. My lodgings at present are the Pollards; No. 3. If you can't ring, for the want of a bell, throw a stone at the door—there's no knocker; it will do quite as well.

FRANK. (*writing in pocket-book*) Enough, enough, my friend. I will but take a little repose at the hotel here, and then join you at the place you have mentioned. You must conduct me to my unhappy brother, and in return for this service you may command me. Farewell.

(*exit into hotel*, L. U. E.

(*At* FRANK'S *exit, hurried music.* BOYS *enter hooting* OLD FOGG, *who is drunk, and dressed as a crossing-sweeper, with broom, &c.* BOB *and a* POLICEMAN *interpose and clear the stage of the mob.*)

316 FOGG. It's cold—very, bitter cold—my heart's ice, I want some gin to warm me; if I could only scrape a few coppers to get half a quartern, shouldn't I feel better, I fancied I saw Maria Johnson tonight, her spirit flits before me, and I must have drink to still my dreadful thoughts. Gin, yes, I love it—I could die for it.

Enter DEVEREUX *from station, and* SHABNER *from* L. U. E., *meeting him.* NED, DICK, *&c., &c., all crowding round.*

NED. Want an honest fellow, your honour, to show you about town, and look arter your property? I know where all the good things are to be had.

DEVER. (*bearing a small portmanteau*) No! I tell you.

BOB. (*aside*) No go. I'll try my luck. (*advancing mysteriously to* DEVEREUX, *and whispering*) Want a reg'lar box of choice Havannahs, your honour, prime cost; or a piece of real Bandanys—got them from a friend—let you have them by the way of Cheapside.

DEVER. Go to the devil with you fellow. (*pushes* BOB *away.*)

BOB. Well, that's civil, anyhow. (*draws back.* FOGG *advances to* DEVEREUX, L.)

DEVER. What do you want?

FOGG. Money to get gin. I'll carry your trunk there for it.

DEVER. Go to the devil with you! (*pushes* FOGG *aside and* X*'s to* L. ALL *come down.*)

NED. What are you pushing the poor fellow in that way for? just because you see he's only a harmless idiot.

BOB. (*coming forward*) Not so harmless as you may think for. Old Deady, the savage, can be dangerous enough at times—a word will do it. Fogg, old fellow, do you see that cove, there? (*points to* NED) Take care of yourself. (*to* NED.)

FOGG. (*eagerly*) Yes, has he got any more gin?

BOB. That's the chap that killed Maria Johnson.

FOGG. (*furiously with a wild cry*) Maria Johnson—he—he—hell bird! (*rushes across fiercely on* NED, *whom he seizes by the throat and prostrates to the earth.*)

NED. (*striving to extricate himself*) Hallo! hallo! what the devil—what are you about? Take him off, there. (BOB *interposes.*)

FOGG. Away! did he not kill Maria Johnson? You've said it once—say it once more while he's in my grasp, and——

317 BOB. Hold hard, it was only fun—let him go.

BOB. (*releasing his hold*) Fun! Maria's death—murder's no fun, at least it was not fun once. (*turns away.*)

DEVER. (*aside*) Maria Johnson! this is strange. I must speak with this fellow. Hallo! (*taps* FOGG *on shoulder*) I've changed my mind, you shall carry my trunk—I'll pay you well for it. (*gives portmanteau.*)

FOGG. More blunt—more gin—more gin.

DEVER. Take it into that hotel. Now Shabner, follow me. (*exit with* SHABNER *into hotel.* FOGG *preceding with portmanteau. Music.*)

NED. Confound the fellow, what a crack he's given me. I tell you what, Master Yorkney, I'll thank you to stow all such jokes in future. I don't like them any more than the old savage does.

BOB. Why it's only the delirium tremens.

NED. Hang such delirious trimmings, I say. Well, I'm off to my lodgings—a dry arch, Waterloo Bridge, tenant at will, rent easy, and no taxes.

Enter CHARLOTTE, *with birdcage from station, a cat in basket, surrounded by* DICK *and the Rabble.*

BOB. (*to* CHARLOTTE) Let me assist you with your luggage, my duck.

DICK. I'll take care of the gentlewoman's things.

CABMAN. Want a cab, ma'am? (*they all gather round* CHARLOTTE, *who is alarmed.*)

CHARL. Oh, la, they'll tear me to pieces. Mr. Yorkney—gentlemen—oh, mercy, they'll let my cat out of the basket. Mr. Yorkney, if you was only a bit of a man——

BOB. A bit of a man! oh, devil it, I can't stand this. Give us a hand, Ned—get out you varmint, stand off, these arn't for you. (CHARLOTTE *screams,* NED *and* BOB *fight* CABMEN, *&c.* CHARLOTTE *trying to keep her bandboxes, &c. together, struggles to get her basket from* DICK; *it comes undone, a cat jumps out, and runs away. General cheveying.* BOB *floors* DICK, *&c.* CHARLOTTE *continues screaming, and scene changes on confusion. Music.*)

SCENE SECOND.—*Room in the York Hotel,* (1*st grooves.*)

Enter DEVEREUX *and* SHABNER, L.

SHABNER. At length we are alone. Now then, my friend, for the grand secret. Let's to business at once.

318 DEVER. This it is, then: of the run of ill luck against me at Liverpool you've already heard.

SHABNER. I have. On that occasion you sent me a Queen's head, politely inviting me, on the score of old acquaintance, to set up your bank again—advance you a few hundreds on your personal security.

DEVER. Which you as politely refused to do. No matter. One evening, without blunt, and without exactly knowing where to get any, I took a short walk to air my brains, and give my ideas a turn. Passing a substantial mansion in rather a retired situation, I saw the master, followed by his servants, starting on their way to church.

SHABNER. You followed their example, of course?

DEVER. No. From one of the latter locking the door on the outside, I was perfectly convinced that no one was left within. You can't think, my dear Shabner, what a queer feeling came over me at the thought of the house being left totally unguarded.

SHABNER. No doubt of it—so very careless.

DEVER. Shocking. Directly they were out of sight, wanting a little exercise, I thought I'd try how high I could jump; when, confound me, if I didn't jump clean over the garden wall!

SHABNER. How very curious; but you always had high notions.

DEVER. Pleased with this proof of my gymnastic powers, I next tried if I could climb as well as I could jump, and soon somehow managed to reach the balcony, which led into the back drawing-room.

SHABNER. Most interesting. Go on.

DEVER. Admiring the furniture, I saw an escritoir—you know my fancy for such articles—it was locked, but that, of course, to me was nothing—the well-oiled bolt flew back——

SHABNER. And you found——

DEVER. A pile of sovereigns.

SHABNER. How very imprudent to leave them there.

DEVER. I thought so, and determined to teach them better for the future, so I hastily wrapped the yellow boys in the first piece of paper that presented itself, and——

SHABNER. Made your way out a devilish sight quicker than you got in; but this is nothing more than an every day affair.

DEVER. Not so fast, I have not done. An hour afterwards, wishing to ascertain the exact state of my funds, I unfolded the paper,
319 and from a few words on it in writing that caught my eye, was induced to read further. It was a letter from the East Indies, and was signed Danvers.

SHABNER. Danvers!

DEVER. Yes, Danvers, the rich manufacturer of Manchester, who afterwards settled in the East Indies, where he was joined by his eldest son. This letter was written by the old gentleman to his former friend, the merchant Dorrington, the very person at whose house I made myself so much at home——

SHABNER. And for whose property you evinced so great a care—go on.

DEVER. It accepted an offer made him by Dorrington to marry their children. The thought struck me in a moment, that Danvers had *two* children, sons; the youngest of whom we had plucked, and that it wasn't likely, from the time that had elapsed, that Dorrington could know either the one or the other, and therefore a little tin might be easily and safely manufactured.

SHABNER. I see it all! capital! Devereux, you certainly are a most extraordinarily clever rascal.

DEVER. Go slow—go slow! This opened the road to a mine of wealth. I had borrowed thirty sovereigns, and wrapped them up in twenty thousand pounds.

SHABNER. Proceed—proceed.

DEVER. The next day I presented myself at the front door of the house I had so lately entered by the back. Mr. Dorrington received me very politely, the more so when he learnt I had just arrived from the East Indies, and announced to him the return of his intended son-in-law.

SHABNER. For whom you mean to palm off our young pal? that scapegrace, his brother Herbert!

DEVER. You've hit it. I told him the young man had departed for London, where he was detained by some family affairs; which made Dorrington immediately determine to visit the capital with his daughter, the intended bride, to meet him. Everything was arranged, there and then, they are on their way, and now we've only to get our bridegroom ready, and the game's our own.

SHABNER. You say *we* get him ready—*our* game?

DEVER. Of course—I mean to let you *in* for your regulars; but

you must unloose your purse strings. Our protegé must have a bang up outfit—Cabriolet—tiger——

320 SHABNER. He shall have some swell clothes—my own vehicle—and a fellow from one of my west-end establishments; but let us first understand each other; what do you mean by regulars? what am I really to have for all this?

DEVER. Oh, don't be afraid; I shall bleed our man for a cool ten thousand at least; the poor devil will be glad of the chance, and you'll have your share of course.

SHABNER. Well, on condition that I go *halves*—I don't mind advancing a hundred or so; but where the devil are we to bag our bird?

DEVER. Leave that to me; I have fellows who know where all the night birds in London roost. What! do you forget that I'm another Otho—that I am emperor of all the modern Greeks?

SHABNER. Or London legs, rather!

DEVER. Well, legs, if you like it better—scamps, anything, from the very top of the tree "to the bottom, down below," as the song says. But dinner must be ready by this time. We'll pay our respects to it instantly. Come, Shabner, the whole hog—neck or nothing. The clear ten thousand——

SHABNER. Or the quarries at Portland! (*exeunt*, L.

SCENE THIRD.—*Dry Arch, and part of Waterloo Bridge by moonlight. On the* R. *side is a flight of steps that lead down from the bridge—on the other side is a part of the river Thames, with barges, bridge, lamps, balustrades, &c. At the rising of the curtain,* JOE ONION, DICK SMITH, CADGERS, *and* VAGABONDS, *men, women, and children, are discovered. The stage is half dark—*JOE ONION *is engaged arranging some straw in the dry arches. At the opening of scene,* NIGGER *is heard playing fiddle without; he enters, engages lodging.*

ONION. (*coming forward*) There, I've prepared all the feather beds—I haven't put too much straw in my own mattrass—I don't want to use myself to luxuries. Are all the lodgers at home, Dick, you young varmint?

DICK. No—there wants Fogg—old Tom Fogg and the new one.

ONION. Ah, the stranger that has slept here these last eight nights—the swell cove, out of luck—it's time that young fellow told us who he is—one ought to know who one keeps company with, in case one should commit oneself.

321 OMNES. Ha, ha, ha!

ONION. Silence! What are you laughing at? Do you know who you are talking to? ain't I Joe Onion, Eskewer, principal director of the London Cheap Lodging House, Dry Arches, Waterloo Bridge—ain't there a whole company of us, a hundred and fifty shareholders, besides the board? all the shares at premium. (DICK *and* VAGABONDS *draw back, abashed. Whistle from above*) Eh! I should know that whistle. Peace! ladies and gen-

tlemen of the bridgeward, peace! while I challenge the watch-word—who's there? (*calling out.*)

NED. (*above*) A friend!

ONION. 'Tis that trump, Ned Brindle—what the devil brings him here? All right, Ned, come down.

MUSIC.—*Enter* NED BRINDLE, *down steps.*

NED. Here I am, friends.

ONION. Come forward, Mr. Brindle; ladies and gentlemen, allow me to introduce a most particular friend of your Arch-deacon, your learned Judge of the Arches, Joe Onion. (*all salute* NED) Good evening to you, Ned—give us your famble—how are you, my trump?

NED. Why, no better than I should be; I've failed today—a regular bankruptcy.

ONION. Ah! I didn't see it in the *Gazette*—how was it?

NED. Why this: a flashy chap, with a pretty girl, got me to call a cab for them and did not *pay* me—the injustice of mankind!

OMNES. Ha, ha, ha!

NED. But that's not the worst of it. Because I haven't paid him his rent, my landlord's seized upon me.

ONION. Seized upon you?

NED. Yes, and thrust me into the street. Took my body, you know there was no goods, so I'm obliged to come and ask a night's lodging of you.

ONION. With pleasure, Ned. I told you my house was always open to you.

NED. You did—where is it?

ONION. Why, here; quite dry and comfortable. We live like kings, supported by a *pier* on each side, you see. Our drawing-room and kitchen are in one of these barges; and these are our bed-rooms.

NED. Is the rent high?

ONION. Nothing a month, and no taxes, water-rate paid by the landlord, and come in at what hour you like?

322 NED. Are you insured?

ONION. Yes; by the parish!

NED. Then I'll take the ground floor.

ONION. You must pay your footing.

OMNES. Ay, ay—your footing!

ONION. And we'll enroll you in the archive.

NED. Hush!

DICK. (*low*) It's one of the police! (*all retire cautiously.*)

Music. POLICEMAN *enters, all feign to sleep. He passes amongst them, holding lantern to their faces, at length he comes to a woman who is huddled up with a child in her arms.*

POLICE. What's the matter with you, my good woman?

WOMAN. Oh, sir, I'm starving with the cold.

POLICE. You shan't do that; I've a drop of rum in my pocke

it will do you more good than me—take it my poor woman. (*she drinks*) Good night; keep quiet, or you'll all have to turn out.

OMNES. Good night, sir. (POLICEMAN *exits.*

ONION. Mum—you see we are well watched, as well as lighted, Ned, all free gratis for nothing.

DICK. Here's another cove coming down the steps—don't frighten yourselves—its only the savage!

ONION. What a wakeful bird you are, Dick, surely.

Music. Enter FOGG, *down steps.*

ONION. I tell you what, old Deady, if you keep such late hours as these, I shall be under the necessity of locking you out.

FOGG. I couldn't help it; have you got any gin? I've been at work!

ONION. Have you earned much today?

FOGG. Yes—yes! I've had my fill—as much as I wanted.

ONION. Well, now then, as you've had your night-cap, a little daffy, and must want rest, you had better go to bed! you won't want any light, you can see by the sky lantern up above, there. (*pointing to the moon*) Good night, old chap, you know your room—Davy's best Wallsend, No. 2.

FOGG. Aye, aye! good night. (*retires to barge.*)

NED. Poor fellow! I'm glad you're kind to him. I hope he'll find a snug berth, and that he won't dream of Maria Johnson.

FOGG. (*overhearing, and starting up*) Of whom?

NED. Oh, lord! nobody, nobody, old chap, go to sleep—
323 pleasant dreams to you—clap your head under the yawning, you'll be as snug as a bug in a rug. (FOGG *again disappears.*)

DICK. (*looking up*) Here's another cove coming, landlord—not a policeman—no, it's the new 'un!

Music. HERBERT DANVERS, *meanly attired, appears slowly coming down steps.*

ONION. Our gentleman lodger! Bravo, Dick! you wakeful bird. You'll let nothing pass you.

HERBERT. (*timidly, having descended*) Excuse me, friends, if I intrude.

ONION. Intrude! not at all, ain't you one of *us?* ain't you privileged—haven't you passed eight nights with us? and though you don't appear to sleep at your ease, we're not affronted; we don't think any the worse of you for that—you musn't imagine, because you see our friend, Ned Brindle, here, that your place is taken—your bed is kept for you—your apartment is all ready.

HERBERT. It was my own culpable folly that brought me to this misery and degradation—the wish to appear above my real station, led me to contract debts. Abandoned by those who called themselves my friends—hunted by the harpies of the law—I had no longer a home—my conscience reproved me—you can enter into my feelings. (*to* ONION.)

ONION. Well, never mind, sir,—bad luck now, better another

time, you know.—Now you, sirs, (*to* VAGABONDS) if you wants any supper, now's your time—for I'm just going into the dining-room, and it's only a penny a nob—so follow me to the next barge.—Now, Ned!

OMNES. Hurrah! Hurrah!—the peck—the peck! (*music—exeunt* ONION, DICK, *and* VAGABONDS *tumultuously into barge*, L.)

HERBERT. I must not join them—wretched as is their meal, I have no claim to it. How much longer will this state of shame and suffering last?—For upwards of a week I have been a wanderer through streets by day; an outcast here by night!—the most destitute among these miserable wretches is far less to be pitied than am I!—they can sleep soundly—but I—oh! Louisa, Louisa! cruelly have I abandoned her—what must be her sufferings?

Music. Re-enter ONION, NED, DICK, *&c., wiping their mouths.*

ONION. Well, we've had a capital snack—that bullock's liver was excellent—and those ingons relished it so—we could have eaten a leetle bit more, perhaps, but however——

324 DICK. Hush! hush!—there's a boat coming this way—I hear the oars.

ONION. That young dog lets nothing escape him.

BOB *enters with* FRANK, R., *they are enveloped in large cloaks, with capes, to conceal their features*—HERBERT *has retired to back.*

NED. Hello!—why hang me if that ain't Bob Yorkney—what the devil brings him here?—I'll keep close! (*draws back.*)

BOB. How are you, gentlemen?—brought a friend with me, you see—don't let us disturb you.

ONION. Not a bit of it—we can make room for you.

FRANK. (*to* BOB) Is it among these miserable wretches, then, that I shall find my brother?—this was why you made me assume this disguise, was it—are you sure he is here?

BOB. Yes; as sure as quarter day. I know that he has passed the last eight nights here—but I have some news for you—we are not the only chaps that are on the lookout for him.

FRANK. What say you?

BOB. There are two others—those worthy and respectable gentlemen, Hawkesworth Shabner, Esq., and Mr. Fox Skinner, alias Devereux, a gentleman, like myself, of three outs.

FRANK. Great heaven! what can be their purpose? no good, I fear, but that we must find out. Let us stay and watch—how shall we discover that they are here?

BOB. Hush! (ONION *comes down followed by* DICK *and the others.*)

ONION. There, your beds are all ready, so now you can go to roost whenever you like—if you want a comfortable snooze, why, all I can say is—you're in luck.

DICK. (*aside*) Stow magging—here's more coves coming.

ONION. Surely not the police?—Perhaps, more lodgers. Apartments must be in request here.

NED. No; they are too well togged to belong to our squad.

BOB. (*to* FRANK) I know them these are our men (*draws* FRANK *on one side.*)

Enter DEVEREUX *and* SHABNER *down steps,* R.

DEVER. (*coming forward*) Two words, if you please my friends?

ONION. (*frightened*) Oh lord! nothing wrong I hope, gentlemen, you don't want any of——

SHABNER. Don't be alarmed, we don't wish to disturb your midnight revels, here we are merely come in search of some one!

ONION. Some one! Don't know any person of that name, there's no gentleman of that name here.

DEVER. It is a young man who has for some time tenanted this place, meanly attired, but of elegant and distinguished manners and figure?

ONION. Elegant manners, distinguished figure, (*aside*) he must mean me? (*aloud*) What is the name of this young man sir? perhaps I——

DEVER. His name is Herbert Danvers!

FRANK. (*aside*) Herbert Danvers?

HERBERT. (*at back, aside*) My name! (*aloud*) Who wants me? who calls me? (*coming forward.*)

DEVER. *and* SHABNER. (*aside*) 'Tis he!

FRANK. (*aside*) Found, found!

HERBERT. (*recognizing* SHABNER *and* DEVEREUX) Shabner, Devereux!

ONION. (*aside, significantly*) They know each other.

HERBERT. (*aside*) These men! (*aloud*) What is it you want with me? What is your purpose in tracking me here? (*doggedly.*)

DEVER. We'll tell you; but first you must chivy your friends, here. We can dispense with their society at present.

HERBERT. Leave us, friends, awhile.

ONION. A privy council. Oh, ve don't vant to poke our noses vere ve're not vished for, so ve'll say ta, bye, bye! Come, my friends, to bed, to bed; it's time for all *decent* people to be at roost; so *alley-cooshay,* as we says it in the modern Greek—this way, ladies and gentlemen. Good night, my rum'uns! (*exeunt singing "Champagne Charley," leaving* HERBERT, SHABNER, *and* DEVEREUX *together.* BOB *and* FRANK, *are on the listen.*

BOB. (*aside to* FRANK) They've retired, so won't we, we can nose all here, snug enough, lie close (*they furtively conceal themselves on one side.*)

HERBERT. (*looking round and seeing the coast clear.*) Now then, you can speak freely your purpose? Do you come to triumph in the misery you have created? Is it not enough that you have ruined me? That my prostration is the work of your hands?

DEVER. Not so fast, we've come to make all right again, to restore you to your former position.

HERBERT. Can it be possible? You mock me, you know I have no money, no hope!

SHABNER. You don't want any hope, you've only to accept the terms we come to offer you.

DEVER. You shall again shine at the west end!

SHABNER. Have your cabriolet—your tiger!

DEVER. Your box at the opera, your stud at Newmarket, belong to Crockford's.

SHABNER. Put up at the Clarendon, put in for the St. Leger, run for the Derby.

HERBERT. And by what miracle? I am bewildered.

DEVER. No miracle at all. You have but to say the word, and our friend Shabner, here, becomes your banker; you may draw on him for whatever tip you choose.

SHABNER. Yes, any advances. I'll lend you three-and-sixpence, now, my tear.

HERBERT. Exchange these rags for luxury and riches! But what am I to do for all this.

DEVER. That's our secret. Tomorrow you shall know all, till then you must trust to us, you have only to consent to be happy, without inquiring by what means. You know Shabner's rather too much tin to run the risk of losing it, by mixing himself up in any move that's not exactly on the square; say the word then, ten thousand a-year, four-in-hand, or breaking stones and the union workhouse.

HERBERT. (*hesitates*) Ah!

FRANK. (*aside*) What horrid plot is this? But I will tear him from them. (*is about rushing forward.*)

BOB. (*aside restraining him*) No you won't. That's easier said than done. You'll spoil all, if you don't mind; you don't exactly know these gentlemen, I do. Leave them to me, I'll cook their goose for them before I've done, or my name ain't Bob.

FRANK. (*aside*) Well, well. (*draws back with* BOB.)

DEVER. (*to* HERBERT) Have you decided? That little bit of muslin of yours, think of her!

HERBERT. Ah! if I thought I could, without crime; without dishonour.

DEVER. We swear you can!

BOB. (*aside*) Over the bender.

DEVER. You're an indispensible agent in a scheme of the
327 greatest magnitude, all depends upon you; you have simply to accept.

HERBERT. Enough! Anything but misery like this; tomorrow——

DEVER. You shall know all, we've said it, you have done well. But you must quit this place, and instantly. Yes, you must cast off these rags, a splended supper waits you; wine, friends, a couch of down—all, all!

HERBERT. I'm yours! Farewell this den! for ever.

DEVER. (*aside*) We have him. (*music*—HERBERT *rushes up steps*

followed by DEVEREUX *and* SHABNER BOB *and* FRANK *steal forward, watching them.*)

FRANK. He rushes on to destruction—it is some infamous conspiracy to which they lead him; but I'll unmask them! I'll——

BOB. You'll stay here, leave all to the cook, I tell you; I'll follow them in double quick time; find out where they are going—you know where I hang out—come to me in the morning, and if I don't give you a good account of them, say I know nothing. I'll soon learn what lay they are on, they are only a little a head of me, I'll be after them—good bye! trust all to Bob.

(*exit hastily up steps after* HERBERT, *&c.*

FRANK. Wretched Herbert! my misguided brother, to what have you consented! Poor Louisa! no thought of thee in all his dreams of splendour, though for the last eight days I have learned, he has abandoned thee; left thee without a home, without a friend in this vast desert, London; peopled by hungry monsters. Unhappy girl! what has become of thee! I would so tenderly have watched over thee! (*leans against* L., *and low music.*)

Enter LOUISA *wretchedly clad,* R. 1 E.

LOUISA. Alone! alone in this wilderness of London—betrayed by him I loved, abandoned to the mercy of a cruel, heartless world. What is to become of me, friendless, and alone! Oh, Herbert, you have indeed been cruel. My brain whirls! I have but one hope—yes, the river, to find beneath its rolling waters a suicide's grave. (*she disappears* R., *and is seen directly on wharf—she kneels. Lime light full upon her face*) Oh, heaven, forgive my betrayer, and pity and pardon me. (*with a shriek, she leaps into the river.*)

FRANK. What was that?

OMNES. (*rising*) What's the row?

328 FRANK. A woman in the water! I'll save or perish with her! (*he is seen to leap in river from wharf*—OMNES *shout.* FRANK *swims towards the shore,* LOUISA *in his arms.*) Help me or I sink. (FOGG *seizes an oar, and holds it towards him,* FRANK *catches it, and is drawn ashore.*)

FOGG. They're saved, they're saved!

(*Tableau—act drop quickly.*

END OF THE FIRST ACT.

ACT II.

SCENE FIRST.—BOB'S *humble garret in the Pollard's.* (*2nd grooves*)—*clock strikes five.*

BOB YORKNEY *discovered at tub washing his linen.*

BOB. Five o'clock! I've tracked my man, and lodged my lady. Yes, I have found out all Mr. Herbert's moves for Master Frank, and got Charlotte a room below; so she's not much out in supposing I am rather above her. If she said so much about their letting her

cat out of the basket, what the deuce will she say when I let the cat out of the bag, and disclose all? Every man his own laundress. (*finishing his washing*) Let me see what sort of a morning it is. She must have retired by this time. (*puts his head out of the window, the door opens, and* CHARLOTTE *peeps in.*)

CHARL. (*aside*) Heigho! I can't sleep, where is Mr. Yorkney? Whether it is the fleas bite one so or what, (*sees* BOB) Eh! up—looking out of window, that linen just washed too; I strongly suspect, let me convince myself! (*steals in and conceals herself behind door.* BOB *leaves window and comes forward.*)

BOB. It's a beautiful morning. I must deceive Charlotte somehow; she'll give me turnips to a certainty, if she thinks I haven't got a servant, as I had before I ran through my fortune. That scoundrel Jacques, my French tiger, was once my right hand, and now I'll make my right hand my tiger; tit for tat. Let me practise a bit.

CHARL. (*aside*) Ho, ho! this is it, is it, Mr. Yorkney?

BOB. (*foppishly*) Jacques my good fellow, get my things ready to dress, bring me a clean shirt. Ah, oui, mi lor (*imitating French accent*) 'dere is your chemise blanche, your clean shirt. Very good Jacques, let me put it on. (*puts on false collar.*) There I've put on my clean shirt. Now, then, my boots, and my D'Orsay. Voila, my lord, vos bottes et votre habit, bon bon. (*takes queer coat and boots and puts them on.*) Now, then, Jacques, allez toute suite, and tell Mademoiselle, below that——

CHARL. (*coming forward*) You need not trouble yourself sir, Mademoiselle knows all.

BOB. (*aside, thunderstruck*) The devil! (*furtively slides socks, &c., from line and puts them in his pocket.*)

CHARL. (*ironically seeing him*) You need not put your linen in your portmanteau. I thought I heard you talking to your French tiger?

BOB. (*aside*) Tiger cat, she should have said. (*aloud*) No; only practising. I have sent him for a draft I've drawn on my banker.

CHARL. Aldgate pump!

Bob. (*aside*) I thought she'd throw cold water on it, I'll confess all at once. Hear me, Charlotte, I'm a ruined homo, a muff, a flat, a Sam, a regular ass. The fact is I haven't a feather to fly with, the truth must out. I have long been a regular scamp upon town, and now be like all the rest of the world, and turn your back on me as soon as you like.

CHARL. No, Bob; you're naturally a good fellow, and capable of making a woman happy.

BOB. Happy! more than happy. I'll delight, transport you.

CHARL. I don't want that, exactly. In a word, forget all your former follies, be industrious, be faithful, and my hand and fortune are still at your disposal.

BOB. Hurrah! hurrah! it's a bargain; let me set my seal to it, you jade. (*catches her up, kisses her, and swings her round.*)

FRANK. (*without*) Yorkney, Yorkney! (*calling*) Open—quick.

BOB. Eh! Mr. Danvers' voice! What screw's loose now? Excuse me, my darling. (*opens door.*)

330 *Enter* FRANK, *followed by* TOM FOGG, *bearing in* LOUISA *insensible, door in flat.*

FRANK. Thank heaven I've found you. I was afraid you'd not be here.

BOB. Don't be alarmed, I'm not out, I assure you. But what the deuce——

FRANK. Let me implore your assistance, your protection for this poor unfortunate girl.

CHARL. What am I to think, Mr. Yorkney? But she is a woman—she wants our succour, I cannot hesitate—a chair, Yorkney.

BOB. Here's the chair. (YORKNEY *brings chair*, CHARLOTTE *assists* FRANK *to place* LOUISA *in it.*)

CHARL. How shall we revive her? Some burnt paper—vinegar?

FOGG. (*tenderly*) A little gin.

FRANK. Hush! she revives!

CHARL. That pallid air, that wet dress. I guess how it has been, poor thing.

FRANK. At this early hour, no house open; this was my nearest hope for aid—you had given me your address, and—soft—she opens her eyes. Pardon me, my friends, but I would spare her the embarrassment, the shame——

CHARL. Yes, yes, we will retire. When you want us you can call. Come, Mr. Yorkney. (×'s.)

BOB. My darling!

CHARL. No doubt it's some love affair. Oh, these monsters of men! O, Mr. Yorkney, if ever you should——

BOB. Nonsense, my divinity! I'll be as true as steel.

(*exeunt* CHARLOTTE *and* BOB, *door in flat.*

FOGG. (*aside*) I'll remain here, in case they should want any gin got. (*draws back.*)

LOUISA. (*reviving*) Where am I? What place is this?

FRANK. You are with friends, who love—who pity you. Friends who would make you happy.

LOUISA. Happy! oh, no—no—no! there is no longer happiness for me.

FRANK. Nay, say not so, Louisa. Dear Louisa, look at me: do you not remember your old acquaintance, Frank Danvers?

LOUISA. Ah, Frank!

FRANK. Your friend, your protector, who never will forsake you.

LOUISA. It is indeed Frank. But in what a moment do we meet again. I recollect it all now. Oh, why did you snatch me
331 from a death that would have terminated all my sorrows, all my sufferings?

FRANK. Death! Why talk of death? Is there not hope on earth, and aid in heaven?

LOUISA. Hope—aid—you know not what I have endured; what agony, delirium, despair, or you would pity.

FRANK. I do—I do! hapless Louisa!

LOUISA. An orphan! friendless, and alone; there was but one on whom I placed reliance; to him I gave up all—my love, devotion,

my life, my soul! but he deceived me—left me—what had I then to do but die? Cruel Herbert!

FRANK. I know it all.

LOUISA. He was the first who spoke to me in tenderness. I had no guide, no counsellor to warn me—he swore to wed me, and I—I loved him far too truly to think he could mean falsely—I consented to share his fate—I fled with him—it was a fault—a fault that heaven has visited in anger—how keenly have I suffered—how bitterly have I repented.

FRANK. Compose yourself; you've tasted the last drop of anguish now—there's yet bright days in store for you. Oh, yes, believe it.

LOUISA. When reckless extravagance had reduced our little means to their extremest verge I sought by work to ward off poverty; the midnight lamp saw me at my embroidery; I said nought's left us now but love; and till he wrenched that from me, I laboured happily. I dreamt not of despair.

FRANK. Great heaven! and then——

LOUISA. My energies forsook me—a day without employment brought want and famine.

FRANK. (*aside*) And I was revelling in luxury, I amassed riches for her—he entailed but wretchedness and privation!

LOUISA. Abandoned by the world—by him—you cannot wonder that, in a moment of distraction, I should have sought to fly from all my sufferings, fly from a world that had deserted me. I thought upon my mother—I prayed to be forgiven—I breathed his name in pardon—I—I—you know the rest.

FRANK. (*hides his eyes*) Oh, yes—yes—yes!

FOGG. (*aside*) Poor thing—poor thing! and I've got no gin. (*looks at* LOUISA, *wipes his eyes.*)

FRANK. No more! no more! All shall yet be well; you
332 shall see Herbert—I will yet yield him to your arms—he shall ratify his vows—yes, I swear he shall be your husband.

LOUISA. Ah should it be so—should he still love me—how shall I bless the generous friend that saved me—give him to my knowledge, tell me who——

FRANK. A thousand times I swore I would watch over—would preserve you; and heaven vouchsafed to smile upon my vows. I have not sworn in vain.

LOUISA. You—and was it you, then?

FRANK. Yes, Louisa; a providential chance 'twas which at that moment led me to the spot, where, aided by this poor fellow—(*points to* FOGG.)

LOUISA. I see it all—my gratitude—— (*turning to* FOGG.)

FOGG. How could I help doing it when I was there? A little gin!

FRANK. (*aside to* LOUISA) He's a poor unfortunate fellow whose intellects are deranged through excess of drinking.

LOUISA. His features bear the mark of sorrow and of suffering; it is only the unhappy that can truly sympathise with those who have known anguish and misfortune. I can easily conceive that he has suffered much.

FOGG. Suffered! Oh, yes, I have; I have, much, much.

FRANK. (×*'s to* FOGG) Let the remembrance of the life you have saved——

FOGG. Remembrance! Oh, no. When I think, I feel here, (*pointing to his head*) and here, (*pointing to his heart*) and then I must have drink to drown its bitterness; and when there is no drink, I weep, I suffer, I am mad.

FRANK. Poor fellow, that shall not be then! Here's that which long will make you lose the memory of your sorrows. (*gives money.*)

FOGG. All this? It is too much, they'll take it from me, give me enough to last for two days, two days. (*takes half-crown piece from money and returns the rest.* FRANK, *unperceived, slips money left into* FOGG's *coat pocket.*) When this is gone I may not want any more; I may, perhaps, be dead!

LOUISA. Dead! Why despair thus?

FOGG. (*quickly to* LOUISA) *You* despaired!

LOUISA. I was mad—I loved—and he——

FOGG. I have loved! I was mad! Yes, she—she, my wife, she's there. (*looks up*) I cannot work, I cannot pray, it is too late. Liquor, liquor! Gin, gin! (*rushes out.*)

FRANK. Unfortunate man.

333 LOUISA. My heart bleeds for him.

FRANK. But let me place you in safe hands; Yorkney, Yorkney! (*calling.*)

Re-enter BOB *and* CHARLOTTE, *hastily, door in flat.*

BOB. Here we are, Mr. Frank. Oh, by-the-bye, I had forgot, I've some capital news for you; your brother Herbert is not going to turn out so bad as we had given him credit for. I told you I'd ferret them out.

LOUISA. Whom said he? Herbert! Herbert Danvers?

BOB. Yes, Herbert Danvers, Miss, he's in luck; the daughter of old Dorrington, the rich Liverpool merchant, (a fellow worth half a million, they say) has, it seems, popped her affections upon him, and this very day, I've learnt, he's going to sign the marriage settlement.

LOUISA. Married! Herbert married! great heavens. (*sinks insensible into chair.*)

FRANK. (*aside to* BOB) Unlucky fellow, what have you done? You have destroyed her.

CHARL. Robert, oh, if thought. Dear lady——

FRANK. Louisa, Louisa! look up; compose yourself. Gently, gently; so, so. She revives! No words, all shall yet be right. (*raising* LOUISA *gently up, who revives, and sinks, in a flood of tears, upon his shoulder—all are moved.*)

BOB. (*aside*) I begin to smell a rat. I've put my foot in it here, it seems, with my fine news.

FRANK. This marriage shall not take place, I swear it. It is some infamous plot, but I'll overturn it all. I'll leave you in the care of this kind girl; there is my purse.

CHARL. Let me conduct you to my room, Miss.

FRANK. Yes, yes; Yorkney, you must with me—you know, it seems, where these base suborners are to be found. Your's *is* intelligence.

BOB. I didn't leave them, after tracking them quick chisel, till I'd fairly housed them, and learnt all about them.

FRANK. Cheer up then, Louisa! cheer up—we will subvert them yet; cheer up—cheer up!

LOUISA. Generous man! could I but think——

CHARL. Oh, if Mr. Yorkney's to have a hand in it, Miss, you may account it done, bad as he is—I can only tell him he doesn't have *me!* if he doesn't accomplish it.

BOB. (*kissing her*) A bargain, my dear Charlotte—signed and sealed.

334 FRANK. Dear Louisa! all shall yet be well!

(*exeunt* FRANK *and* BOB *through door.* CHARLOTTE *and* LOUISA *cross stage after them, as scene closes in.*

SCENE SECOND.—*An elegant apartment in an hotel.* (1*st Grooves.*) *Table and chairs brought on.*

Enter HERBERT, DEVEREUX, *and* SHABNER. (HERBERT *has changed his dress, and is fashionably attired.*)

HERBERT. Begin here. You promised this morning I should have a full explanation of everything—I now demand it. What is all this—what is this fortune—what am I to do for it? (*with energy.*)

SHABNER. Zounds! don't fling your arms about in that manner, you'll burst the seams of my coat.

HERBERT. (*impatiently*) Your coat? your coat? I am then a puppet; there must be no further delay—I must—I will know all, and that instantly.

DEVER. Softly—softly; let's see what you have to complain of. Your daily vision—your nightly dream, was to become one day the favourite of fortune, and to acquire riches; these visions are now on the very point of being accomplished—you have but to accept them—they will be given you.

HERBERT. Yes; but at what price? What am I to render in exchange for all this?

DEVER. Merely your signature to a marriage settlement.

HERBERT. Marriage settlement! *I* marry! and Louisa! never. (*desperately.*)

SHABNER. Zounds! take care of my coat, there.

DEVER. (*coolly*) Louisa! and who is she? Some old flame, I suppose.

HERBERT. No; she is an angel of virtue and resignation, whom I have condemned to misery and sorrow—to whom I have plighted my troth! can I abandon her—never—never!

DEVER. Would you, then, for a few ridiculous scruples, give up a fortune of thirty thousand pounds?

HERBERT. Thirty thousand pounds!

DEVER. Yes; with which you might ensure the happiness of this Louisa of yours—of yourself, and of two of your most attached friends. Whilst, if you refuse——

SHABNER. I shall instantly sue you for what I have advanced.

DEVER. You will return to the misery from which we have rescued you, to beggary, starvation, and despair.

HERBERT. Cruel alternative.

DEVER. Why, as the marriage portion of Miss Dorrington will be thirty thousand pounds, you cannot grudge us our third; a widow would have that, you know, while you'll have a wife and double the share. In a word, you must sign an acknowledgment to pay us ten thousand pounds! and I think you will confess that's liberal. (*presents paper.*)

HERBERT. (*reads it*) You think that I will sign this?

DEVER. Certainly, you'll act jannock surely? You don't want to return to the dry arch of Waterloo Bridge, do you?

HERBERT. Do not recall the memory of my sufferings—my degradation.

DEVER. Sign them—you must—you are in our power.

SHABNER. (*quickly*) Yes, I can arrest you for what I've advanced, and you can't take the benefit.

HERBERT. It is too true. Ah, Louisa, 'tis not my act, but Fate's. Where is the pen?

DEVER. (*giving him one*) Here. (HERBERT *goes to table and signs.*)

DEVER. (*watching*) 'Tis done, 'tis done!

Enter FRANK L. U. E., *cautiously observing them.*

SHABNER. (*aside*) Five thousand! a pretty good morning's work; worth risking a few pounds for.

HERBERT. (*with paper*) There take it. (*as he presents it to* DEVEREUX, FRANK *rushes between them and seizes it.*)

FRANK. Hold!

HERBERT. Ah!

DEVER. and SHABNER. } Confusion! who is this?

FRANK. This is an affair of moment, and requires a witness! I have come to offer my services.

HERBERT. Great heavens! who do I see?

FRANK. (*aside*) Hush! silence. (*to* DEVEREUX) You were about to compromise this rash man; it is fit I make him acquainted with his real position.

SHABNER. But, sir—— (*affecting to bluster.*)

FRANK. (*coolly*) Permit me—'tis my duty—bye-and-bye we will examine this instrument. (*puts paper in his pocket.*)

DEVER. (*fiercely*) 'Sdeath! Bye-and-bye—impossible, sir; it must be done now, by-and-bye won't do.

FRANK. (*coolly*) I do not speak to *you*, now, sir. (SHABNER *and* DEVEREUX *stand electrified and abashed, and draw*

back—to HERBERT, *ironically*) As I find you here, surrounded by every luxury—she doubtless is equally happy who confided to you her love—her life! all, all!

HERBERT. Happy! she shall be——

FRANK. (*bitterly*) Aye; she has been—*so* happy, that but for me, a few short hours since, and she had lived no longer.

HERBERT. (*much agitated*) Gracious heaven! what say you? Louisa——

FRANK. (*with great emotion*) Abandoned—heart broken—despairing—reason forsook her. A prey to remorse and famine, if Heaven had not mercifully conducted me to the spot, and given me strength to save her, she wouldn't today have wanted either my assistance, or your truth!

HERBERT. (*struck with remorse*) Wretch that I am!

DEVER. (*recovering his confusion, and coming forward*) It was precisely to assist her, that my friend Herbert, here——

FRANK. I again repeat, I do not address myself to you, sir. (DEVEREUX *draws back, confounded—to* HERBERT) You have heard my words; decide, what you will do—shall I give you back this paper—will you now contract this *brilliant* union that is proposed to you—marry this *rich* heiress—there will be no impediment. Tomorrow, poor Louisa will be no more! killed by your perfidy—your cruelty—you will only have to blush for having usurped a name more valued, it would seem than your own.

HERBERT. Oh! no, no, no—I renounce this criminal alliance—I reject this unworthy fortune—I have no longer ambition—Louisa and poverty, rather than riches and remorse.

FRANK. I was not deceived—thanks, gracious heavens! I have not spoken in vain. Let us away from this hateful place.

HERBERT. Yes, yes; away, away!

DEVER. (*desperately*) Stay, sir; I would know by what authority——

FRANK. By what authority? (*energetically*) The authority of right over wrong—of virtue over villainy. By what authority? the strongest, the most sacred—self-preservation; I would not have MY NAME dishonoured!

DEVER. and SHABNER. (*astonished*) Your name?

337 FRANK. Yes; I will conceal it no longer; Francis Danvers! the real Bridegroom expected—the brother of your too credulous victim—of the unhappy man you would have made your tool—you- dupe.

DEVER. and SHABNER. (*thunderstruck*) Brother!

FRANK. Now Herbert, come.

(*exeunt* FRANK *and* HERBERT, L.

DEVER. (*furiously*) Malediction; his *brother*—returned, just at this moment too, when we'd accomplished all; cursed chance—I will not lose him yet. (*rushes off*, L.)

SHABNER. (*sinks into chair*) He's carried off my clothes, my jewelry, my union pin, perhaps my cabriolet; I can't stand that—stop; stop! Hallo; hallo! (*rises hastily, and rushes out after them.*)

SCENE THIRD.—*Interior of a low Concert Room in Bermondsey. Stage built,* C., *foot lights, &c., bar,* R.—*the room filled with people. Chairman announces whatever is required. Singers are engaged, all applaud vociferously—at end, band plays* "God Save the Queen." *Stage lights are put out—some exeunt—roughs play at bagatelle table,* L. NED BRINDLE, *who has been acting as chairman, and* DICK SMITH *as nigger among them.* SHABNER *discovered giving directions.* WAITER *at door.*

NED. You beat me, Joe; now you must give me my revenge.

ONION. I shan't refuse revenge to a friend.

NED. Ha, ha! I'm sure you never did to an enemy.

ONION. We should always forgive our enemies.

NED. Ha, ha! hear the crocodile. Are you keeping a sharp look out there, Dick Smith.

DICK. Aye, aye, old tar; I'll score the tally, never fear.

IKEY. Mind, I shall expect every gemman, as is a gemman, and plays at bagatelle, to pay for the table, and no mistake.

NED. I'll owe it to you Master Bates. Now Dick, place the red ball, and give me the cue, you young warmint, do. Croky, old fellow, I'll play you three times round the board for a mag a turn, and a pint to come in—the first five out of nine.

ONION. With all my heart.

NED. Give us the chalk, Dick.

DICK. Oh, you've made up your mind to wall it, have you; it's no go, Master Ned; don't use chalk only when I scores myself.

338 NED. Nonsense, it's only the end of the cue that's a little greasy—don't hit flush. Now then—(*begins to play*) twenty-four; I'm in luck this evening—I shall make a fortin, if I go on in this manner.

Enter DEVEREUX *door* R. U. E. *Players stop at their entrance—all rise and bow to* DEVEREUX.

DEVER. Go on, my friends, go on; never mind me, smoke your pipes, dispose of your lush, and play out your game. Bates! (*calling.*)

IKEY. Sir! (*this is the waiter.*)

DEVER. A drop of the usual.

(DEVEREUX *and* SHABNER *sit at table, players, &c., resume their pursuits.* IKEY *returns with liquor.*)

SHABNER. Well, now then for this move, that's to do everything; for, I confess, my dear, Mr. Fox Skinner, no offence to you, I do not exactly comprehend your designs.

DEVER. That's very likely; I don't want you to *comprehend* me, I only ask you to assist me—it's a bold push, a desperate scheme, I grant you, but——

SHABNER. Well, if I can without compromising myself, manage to get out of the affair without loss——

DEVER. You can. This is my plan: to seize upon this idiot, Herbert, who has slipped through our fingers, get possession of his bond for the ten thousand, and then leave him to settle matters with his brother how he can. I am aware there are obstacles to surmount—the brother and the prior engagement, but I think they are to be got over.

DEVER. Now then;—first, for this brother—we shall soon have him in our power.

SHABNER. I hope so. You know there is the money advanced, the clothes, the jewelry, and the cabriolet, this Herbert has got—not but what can I get a warrant out against him for the cab—that's felony, stealing.

DEVER. Don't fret yourself—don't be in too great a hurry—wait till this brother comes. I've told that half-and-half know-nothing noodle, Yorkney, that the honour of Herbert is in my hands—(*drinks*)—and have made an appointment with this redoubtable brother to meet me on the subject here.

DICK. Forty-five is dead, and fifty acquitted—Mr. Brindle, you've sacked eleven deuce and a win, besides all the trimmings.

339 NED. Then I shall stand a Jemmy and sauce at Mother Potter's in the Cut; we shall find some old acquaintance there. You'll join us, Onion, won't you? It's your tin, you know, that will pay for the repairs.

ONION. No, no!—I've got some business, *private;* there's something on foot. I'm employed by Government!—(*significantly.*)

NED. Oh! oh! that's a different matter; you're rising in the world. Well, I'll eat your share for you.

DEVER. (*rises*) It is the hour I fixed; he can't be long—(*takes a cigar from his pocket*) Onion! (*calling.*)

ONION. (*approaches and takes off cap*) Sir! to you.

DEVER. A light.

ONIONS. Yes, governor; illuminate you directly, sir.—(*brings light and presents it.*)

DEVER. 'Tis well; away. (*begins to smoke.* ONIONS *bows and retires.*)

Enter BOB, R. U. E., *stealing in, looks cautiously about.*

BOB. (*aside*) As I suspected—Rat's Castle, the Rookery. This is the Dyot-street Hotel, is it? I thought I'd come and see. Eh! there is Devereux all ready!

DEVER. (*sees him—aside*) Confusion! Yorkney here! What does he want? (*aloud*) Yorkney!

BOB. His own self, Mr. Devereux; just come to let you know, sir, that I have seen Mr. Frank Danvers, and made an appointment with him. (*aside*) There's some infernal mischief on foot. If I could only hide myself anywhere to spoil the plant.

DEVER. (*aside*) The specious scoundrel!

SHABNER. (*to* DEVEREUX, *in a marked manner*) Well, you know our agreement; I shall leave you now.

SHABNER. (*sinks into chair*) He's carried off my clothes, my jewelry, my union pin, perhaps my cabriolet; I can't stand that—stop; stop! Hallo; hallo! (*rises hastily, and rushes out after them.*)

SCENE THIRD.—*Interior of a low Concert Room in Bermondsey. Stage built,* C., *foot lights, &c., bar,* R.—*the room filled with people. Chairman announces whatever is required. Singers are engaged, all applaud vociferously—at end, band plays* "God Save the Queen." *Stage lights are put out—some exeunt—roughs play at bagatelle table,* L. NED BRINDLE, *who has been acting as chairman, and* DICK SMITH *as nigger among them.* SHABNER *discovered giving directions.* WAITER *at door.*

NED. You beat me, Joe; now you must give me my revenge.

ONION. I shan't refuse revenge to a friend.

NED. Ha, ha! I'm sure you never did to an enemy.

ONION. We should always forgive our enemies.

NED. Ha, ha! hear the crocodile. Are you keeping a sharp look out there, Dick Smith.

DICK. Aye, aye, old tar; I'll score the tally, never fear.

IKEY. Mind, I shall expect every gemman, as is a gemman, and plays at bagatelle, to pay for the table, and no mistake.

NED. I'll owe it to you Master Bates. Now Dick, place the red ball, and give me the cue, you young warmint, do. Croky, old fellow, I'll play you three times round the board for a mag a turn, and a pint to come in—the first five out of nine.

ONION. With all my heart.

NED. Give us the chalk, Dick.

DICK. Oh, you've made up your mind to wall it, have you; it's no go, Master Ned; don't use chalk only when I scores myself.

338 NED. Nonsense, it's only the end of the cue that's a little greasy—don't hit flush. Now then—(*begins to play*) twenty-four; I'm in luck this evening—I shall make a fortin, if I go on in this manner.

Enter DEVEREUX *door* R. U. E. *Players stop at their entrance—all rise and bow to* DEVEREUX.

DEVER. Go on, my friends, go on; never mind me, smoke your pipes, dispose of your lush, and play out your game. Bates! (*calling.*)

IKEY. Sir! (*this is the waiter.*)

DEVER. A drop of the usual.

(DEVEREUX *and* SHABNER *sit at table, players, &c., resume their pursuits.* IKEY *returns with liquor.*)

SHABNER. Well, now then for this move, that's to do everything; for, I confess, my dear, Mr. Fox Skinner, no offence to you, I do not exactly comprehend your designs.

DEVER. That's very likely; I don't want you to *comprehend* me, I only ask you to assist me—it's a bold push, a desperate scheme, I grant you, but——

SHABNER. Well, if I can without compromising myself, manage to get out of the affair without loss——

DEVER. You can. This is my plan: to seize upon this idiot, Herbert, who has slipped through our fingers, get possession of his bond for the ten thousand, and then leave him to settle matters with his brother how he can. I am aware there are obstacles to surmount—the brother and the prior engagement, but I think they are to be got over.

DEVER. Now then;—first, for this brother—we shall soon have him in our power.

SHABNER. I hope so. You know there is the money advanced, the clothes, the jewelry, and the cabriolet, this Herbert has got—not but what can I get a warrant out against him for the cab—that's felony, stealing.

DEVER. Don't fret yourself—don't be in too great a hurry—wait till this brother comes. I've told that half-and-half know-nothing noodle, Yorkney, that the honour of Herbert is in my hands—(*drinks*)—and have made an appointment with this redoubtable brother to meet me on the subject here.

DICK. Forty-five is dead, and fifty acquitted—Mr. Brindle, you've sacked eleven deuce and a win, besides all the trimmings.

339 NED. Then I shall stand a Jemmy and sauce at Mother Potter's in the Cut; we shall find some old acquaintance there. You'll join us, Onion, won't you? It's your tin, you know, that will pay for the repairs.

ONION. No, no!—I've got some business, *private;* there's something on foot. I'm employed by Government!—(*significantly.*)

NED. Oh! oh! that's a different matter; you're rising in the world. Well, I'll eat your share for you.

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SHABNER. (*to* DEVEREUX, *in a marked manner*) Well, you know our agreement; I shall leave you now.

DEVER. Good: Mr. Yorkney will accompany you—you can go together.) (*significantly.*)

BOB. (*aside*) The devil!

DEVER. (*aside to* SHABNER) You must not lose sight of him. (*hand organ heard at a distance.* DEVEREUX *listening, aside to* SHABNER) Hush! don't you hear that organ? it announces his approach—he is now in the next street.

BOB. (*aside*) What devilry are those two pretty chickens hatching now? (*a pause. A voice is heard crying* "Baked 'taters, all hot!")

DEVER. (*still aside to* SHABNER) Ah! that cry! he's entering the street—didn't I tell you so—our ten thousand pounds are safe! (*a clap of the hands heard near the door, -wice.*)

340 BOB. (*aside*) A signal!

DEVER. (*aside to* SHABNER) He's within a few paces of the house—that Dick Smith is, indeed, a wakeful bird. (*aloud*) Away, quick, quick. (*to* YORKNEY, *who is going the other way*) No, not that way. Go out by the side door to prevent a cross and jostle. (*whispering* SHABNER.)

BOB. (*aside*) I don't know why—but I'm all in a tremble—never mind—I'll queer them yet!

(*exit* BOB, *following* SHABNER *reluctantly; forced off by* DEVEREUX, R. *Scarcely are they gone when* FRANK *enters,* L. U. E., *pauses a moment at the door, and looks around him.*)

FRANK. You have chosen a strange spot, methinks, for our meeting, sir!

DEVER. It is not very inviting, certainly—but it is private—and our conference requires that we should not be disturbed.

FRANK. Right; when the honour of a brother—what is this fearful secret you would reveal to me?

DEVER. Will you not come nearer, sir, and take a seat? One would think, by your stopping at the door, you were frightened!

FRANK. Frightened! I? (*comes down,* DEVEREUX *advances.*)

DEVER. 'Tis well, sir; I knew you were a man of courage—we can now hear each other capitally.

FRANK. (*observes* DEVEREUX) To the point, sir—to the point!

DEVER. (*changing tone*) I intend it. You this morning interfered in a little affair that had been previously arranged between me and your brother, Herbert Danvers.

FRANK. Yes; an infamous bargain—one I could in no way sanction.

DEVER. (*insolently*) Your sanction wasn't wanted, sir; it is sufficient the parties to it were satisfied—your brother had given his word—and with men of honour their word is their bond.

FRANK. With men of *honour*, it may be so, but——

DEVER. This irony is ill timed, sir. I have listened patiently hitherto, neither dreading your resentment, nor wishing your esteem; I only desire to have the memorandum restored, of which you, this morning, forcibly became the possessor, and which you now have there. (*points to* FRANK'S *pocket.*)

FRANK. Indeed! you have been well informed; and is
341 your purpose, in inviting me to this place, simply to obtain possession of this document?

DEVER. It is.

FRANK. (*drawing back*) Then, sir, I wish you a very good evening.

DEVER. (*seizing him by the arm*) You do not go, sir!

FRANK. Who shall hinder me? Away! (*pushes him off, and advances to door, when he is stopped by* ONION *and Vagabonds, who seat themselves at different tables.* ONION *is smoking*) Ha, you are not alone it seems, no matter, I fear you not, this house is public. I can summon aid—I will tell——

DEVER. And I will tell you something, you do not leave this room. (*seats himself coolly.*)

FRANK. This is too much. But these people—(*pointing to Vagabonds, who are seated up stage*) though they seem poor, doubtless possess some manly feeling, they will not tamely see me sacrificed. Friends—(*advances to them*) this man would rob me, would force me. (*Vagabonds all turn aside with a sneer*) Ah, where am I? (*astonished.*)

DEVER. You see, sir; will you now resign that paper?

FRANK. Never! I see these men are creatures of your will, but still I may obtain that succour from without, which is denied within.

DEVER. (*imperatively*) Now, the writing.

FRANK. Never! you must kill me, coward, ere you obtain it, for I will only part from it with life!

DEVER. Kill you! No, no, for the last time, will you give up that paper?

FRANK. No, no! Never!

DEVER. Then we must take it. (*makes signal. Four men advance, rush upon* FRANK, *and begin to rifle him.*)

FRANK. (*struggling*) Villains!—Help! help! rescue.

ONION. Here it is! (*gives paper to* DEVEREUX, *which he has received from one of the Vagabonds who has secured it.*)

DEVER. 'Tis well, release the gentleman. (*Vagabonds leave* FRANK *and resume their seats.*)

FRANK. You shall one day dearly pay for this.

DEVER. Not so fast, sir, I have not done with you yet.

FRANK. What more would you?

DEVER. You are — man of honour, Mr. Danvers, and I know will never forfeit your word, much less your oath.

FRANK. Well, sir?

DEVER. You must therefore, swear by all you hold most sacred
342 on earth, never to disclose anything that may have passed here, nor interfere with any project I may hereafter put in execution.

FRANK. Monster! And let you tamely consummate the ruin and dishonour of my brother, become a cowardly accomplice to this odious marriage you would force on him? far rather perish. No, by the ashes of my father, here I swear, that once beyond the

bounds of these accursed walls, I will, to all the world, proclaim this outrage—denounce your villainy.

DEVER. Thanks for your candour, you mean this?

FRANK. The moment I depart from hence I swear to——

DEVER. Then you shall never leave. To work. (*to* VAGABONDS.)

FRANK. Good heavens! what mean they? What will become of me. (*knocking heard at door.*

WAITER. It's the police!

SHABNER. I shall be ruined.

DEVER. Quick! gag him, and sing. (*in spite of his struggles* FRANK *is gagged and hidden by* ROUGHS. SERJEANT *and* POLICEMAN *are admitted, as all sing "Walking in the Zoo."*)

SERJEANT. What's the meaning of all this noise?

ONION. Only a little bit of an entertainment, as the old house is coming down, that's all, sir. (*all sing.*)

SERJEANT. Well, you might draw it a little milder. Good-night. (*he exits—door opens.*)

DEVER. Now you are friendless.

BOB. (*rushing in.*) Not yet, my beauty. (*general fight.* FRANK *is being forced down trap,* L.)

DEVER. The paper's safe. (*old* FOGG, *who has been on unseen all the time, seizes paper and exclaims—*" It is—Old Fogg's got it!" *Tableau, and*

END OF ACT SECOND.

ACT III.

SCENE FIRST.—*Room in the "Ivy" Public-house.* (1*st grooves.*) *Table and chairs.*

Enter DEVEREUX, L.

DEVER. All goes well, Frank Danvers is safe enough. Louise must next be got rid of. I've sent for old Fogg to assist one. Oh, here he comes.

343 *Enter* FOGG, L.

Sit down, Fogg; by-the-bye, what did you do with that paper you took from me?

FOGG. Destroyed it—tore it up.

DEVER. You're sure?

FOGG. Certain. (*aside*) Not I, Frank Danvers has got it safe enough. (*aloud*) Yes, I tore it.

DEVER. That's all right, then. Stop, I know you don't like to talk without drink, let us first have some refreshment. Waiter. (*calling.*)

Enter WAITER, L.

FOGG. Some gin! (*sits at table.*)

DEVER. Bring some of your best Geneva. (*exit* WAITER. *Aside*) So far so good. The brother safe; Louisa, by the assistance of this drunkard, once removed, no obstacle will then remain; old Dorring-

ton is pacified, and—ah, the liquor. (WAITER *brings on decanter and glasses, and exit*) Now then, to business. (*fills,* FOGG *drinks*) What think you of this, eh?

FOGG. Capital, best cordial gin! It warms me, fires me, does me good.

DEVER. Another glass, and then we'll talk. (*fills.*)

FOGG. (*drinks with great relish*) Now I can speak.

DEVER. Well, we'll talk of Maria Johnson.

FOGG. (*rising violently*) Who? oh, no, we must not talk of her, it maddens me.

DEVER. Nay, nay, compose yourself, be calm. (*makes him resume his seat*) Listen to me—mine are not idle words; I speak of her, because I knew her.

FOGG. You knew Maria? you knew an angel then. Was she not beautiful?

DEVER. She was.

FOGG. And good as she was beautiful; too good, she died young.

DEVER. Yes; scarcely thirty-five.

FOGG. Right.

DEVER. She lived at Esher—'twas her native village.

FOGG. It was.

DEVER. And she would have been there now, and happy, had but her husband been left to watch over and protect her.

FOGG. (*much moved*) Oh, yes, yes!

344 DEVER. But Fate willed otherwise; that husband was one day taken up, thrown into prison, tried, and condemned—for he was guilty.

FOGG. No, no, not guilty—innocent, I say. (*vehemently.*)

DEVER. Innocent or guilty, it matters not.

FOGG. Innocent, I say. I ought to know—he starved, but never stole!

DEVER. (*aside*) I was right, (*aloud*) your name then, is Thomas Johnson?

FOGG. Yes, yes, with *her*, but since the savage—Deady Fogg, and half a hundred others given in scorn.

DEVER. Your judge transported you for fourteen years.

FOGG. Yes, they tore me from her, from my child, I left them destitute.

DEVER. She must have suffered much!

FOGG. Much—much—'twas well she died.

DEVER. She had been dead three years when you returned.

FOGG. (*deeply affected*) Yes, yes—three years.

DEVER. And you have not forgiven the author of her death?

FOGG. (*savagely*) Forgive! No, no—never, never!

DEVER. Should you find that wretched person, what would you do?

FOGG. (*with deadly determination*) I would kill him.

DEVER. (*insidiously*) Come, another glass. (FOGG *drinks*) I know that person?

FOGG. (*quickly*) Ah!

DEVER. It is a *woman?*

FOGG. A woman? What cause!

DEVER. Jealousy!—jealousy of your Maria, because less beauteous, she envied—hated her!

FOGG. (*eagerly*) Ah, well—this woman—this woman?

DEVER. This very night, you may, perhaps, behold her.

FOGG. (*wildly*) Tonight?—where—where?

DEVER. Not very distant. There is a lonely lane near the Clapham road, close to the railway.

FOGG. Ah, the King's-cross—the—brickfields—I know them—the "Ivy," I know it well.

DEVER. Should she pass that way, she will clap her hands in private signal, and will confess if asked, she saw Maria Johnson die—by that you'll know her.

FOGG. Enough, nothing shall save her? (*going.*)

DEVER. Stay, where are you going. (*crosses.*)

FOGG. (*doggedly*) To wait for her.

DEVER. Stop! take that liquor with you? (*points to decanter.*)

FOGG. No! I will take *this?* (*takes knife from table.*) Good-bye!—good-bye! (*rushes off.*)

DEVER. So that's accomplished? That footstep! Ah! she comes!

Enter LOUISA, R.

LOUISA. (*aside*) I have given them the slip, their revelry, their gaiety, ill assimilated with my lonely thoughts. Now for this stranger? What can he want with me? He spoke of Herbert!

DEVER. (*advancing*) Your servant, madam. I requested this interview by the desire of a common friend, Mr. Francis Danvers!

LOUISA. Ah, the generous, the devoted Frank! I hope no fatal accident——

DEVER. No, madam; you have nothing to fear, at least on his account.

LOUISA. For whom else, then?

DEVER. The unhappy Herbert!

LOUISA. Great heavens!

DEVER. He is obliged to conceal himself, to leave London. But I'll be brief. Heavy embarrassments, which his poor brother and I have in vain endeavoured to meet, have brought on him the harpies of the law. See madam, (*showing bill*) here is an acceptance drawn by Mr. Shabner for ten thousand pounds, and there are others which he's now pursued for.

LOUISA. Great heavens! Oh, Herbert, Herbert! Yes; 'tis too evident.

DEVER. Mr. Frank wishes you immediately to leave this town for Liverpool—go by the rail—wait there for Herbert—he'll join you there.

LOUISA. Go without seeing him? Never; if he's in danger 'tis my duty to remain near him; I will not leave London unless in company with Herbert.

DEVER. But should it be impossible, should his safety render it necessary that he should quit London alone——

LOUISA. You'll excuse my apparent want of confidence—but I

repeat, that I will not leave London without the fullest conviction that he will not marry another.

DEVER. Well, then, you *shall* see him, there is where he is waiting.

LOUISA. (*reading*) "The railway, Clapham-road," ah, let me fly—you are certain I shall find him there?

DEVER. Yes; or a man who will conduct you to him—
346 you'll find out this man, for it is necessary to use caution, by clapping your hands thrice near the house, and repeating the mysterious sesame, we have agreed on—these words "I saw Maria Johnson die!"

LOUISA. (*starting, much agitated*) Good heaven! those words, those ominous words—Maria Johnson!

DEVER. Do they frighten you?

LOUISA. No, no—if *Herbert* has fixed on them.

DEVER. He has!

LOUISA. Then I'll repeat them.

DEVER. Do, they'll bring you to his arms. (*loud laugh without.*)

LOUISA. Those sounds—they come. Adieu! I'll fly to meet him. (*exit* LOUISA.

DEVER. What now shall cross me? The brother lies in death among the ruins—that man will make sure of the woman—let me complete my work—for fortune, Dorrington and Herbert.

(*exit at back.*

SCENE SECOND.—*A gloomy cellar in the house of Shabner.*

Enter FRANK, R.

FRANK. A prisoner here in this lonesome place, whilst the villain, Devereux, revels in his guilt; no outlet—no means of escape. Oh, brother, brother, to what has thy folly and imprudence brought thee! Could I but defeat the ruffians, and prevent the consummation of their base designs. When I think that Herbert has consented to personate me, and in my name seeks to bring destruction upon an innocent girl, my heart swells nigh to bursting. (*noise heard—music*) What noise is that—it sounds — if some one were trying to remove the bricks of this wall—should it be deliverance! should it be a friend! Oh, heaven grant it—that I may escape to save a brother from shame and ruin, and hurl a deadly retribution on the head of Devereux. (*chord as a portion of the wall falls in, and* BOB YORKNEY, *smothered in mud and dirt, falls through.*)

BOB. It's only me, governor: are you dead? because, if you are, say so, and save me from wriggling through any further.

FRANK. That voice—I cannot be mistaken—Yorkney.

BOB. Yes, Yorkney, who in spite of all those infernal black-
347 guards did to prevent him, fought through every obstacle, and is determined to snatch you from your enemies.

FRANK. Thanks, thanks.

BOB. And I had a job to find you arter they put you down the trap. Lor, I had two or three mills, was thrown out of the house

like a dog, but I crawled through the sewers, for I knew where they'd put you. I knocked in the wall, and here I am with a muscle as big as the dome of St. Paul's, to floor any vagabond that dares molest you.

FRANK. But the villain Devereux?

BOB. I overheard him hire old Fogg to kill your brother's young woman—tomorrow. Herbert's to be married to Miss Dorrington, in your name, and your goose is supposed to be cooked.

FRANK. Can you lead me to him?

BOB. I can, but it's a lonely place.

FRANK. No, matter, villainy must not triumph—I will snatch my brother from infamy, and save a confiding girl from despair. Come, Bob, and heaven will nerve the arm of Frank Danvers to fight in the cause of Innocence, and punish the guilty as their crimes deserved. (*music—they exeunt through wall.*)

SCENE THIRD.—*The Railway, full set. Stage dark. Music.*

Enter FOGG, *he looks cautiously round.*

FOGG. This is the spot. Yes, there is the crib, the "Ivy,"—no one is here—good, good—but will she really come, this murderess? should I have been deceived—but no, no, 'tis clear, that man knows all—I'll have revenge!—he says I ought to have it. (*grasping his knife firmly—walks about, agitated.*)

Music. Enter LOUISA, *cautiously looking round.*

LOUISA. What a gloomy spot. I shudder, my courage fails me.

FOGG. A woman! it must be her, let me see. (*rapidly lays hold of her.*)

LOUISA. (*shrieks*) Ah! who are you? what would you!

FOGG. (*surprised*) Who do I see? I know you, yes, yes, the bridge, 'twas you who would have destroyed yourself.

LOUISA. And you are he who helped to save me.

FOGG. (*wildly*) But what do you here?

348 LOUISA. I am in seach of one—this should be the house.

FOGG. No, no, not *that*, away, away and leave me; I, too, am waiting, expecting some one; you must not stay, I could not before you——

LAURA. (*aside*) He waiting, can he be the person who is to conduct me to Herbert? I must ascertain that—(*goes to house.*)

FOGG. (*aside, agitated*) Going there? Great Heavens!

LOUISA. (*aside.*) Now for the signal. (*claps hands.*)

FOGG. That signal—no, no, and yet what do you do there? Why did you clap your hands? Oh, if it should be? (*seizes and brings her down.*)

LOUISA. Ah! did I not say that I would see some one?

FOGG. (*with strong emotion*) Who, who? there is nobody here but me—we are alone, I tell you.

LOUISA. (*aside*) 'Tis plain he knows the secret, but waits the word—this is the man that's to conduct me, I'll speak to him at

once. (*aloud*) Listen, my friend: "*I saw Maria Johnson die!*" (*solemnly.*)

FOGG. (*with a wild shriek, raises knife*) Ah, wretch!

LOUISA. (*screams*) Oh, mercy!

FOGG. (*furiously*) Repeat it, repeat it! Had any other said those words but you—I know not why I tremble—you did not—you did not—no, no, say no.

LOUISA. You doubt my truth? Again I say, "*I saw Maria Johnson die!*"

FOGG. (*with desperate energy*) Then I no longer pity! Perish!

LOUISA. (*falling on knees*) Oh, mercy! Yes, I saw her die, she—she was my *mother!*

FOGG. (*drops knife*) Your mother! your mother! Merciful Providence!

LOUISA. That earnest gaze—what horrid mystery!

FOGG. Your mother! I cannot speak, I'm stifling—joy—gratitude—girl, girl—that woman, Maria Johnson, your mother! She was, she was!

LOUISA. Oh, speak!

FOGG. My wife!

LOUISA. (*throwing herself in his arms*) Father! father! (*chord.*)

FOGG. Father! that name heard once again! oh, it repays me all. Daughter, daughter! (*embraces her passionately.*)

LOUISA. We never will part more.

FOGG. Never, never!

LOUISA. My mother blessed you with her dying breath.
349 She knew you were not guilty. She had obtained the proof.
It cost her her life; the wretch for whose guilt you were condemned, to buy her silence and his safety murdered her.

FOGG. Great heavens, my poor Maria!

LOUISA. She had discovered the culprit, whose real name was Bernard Thornton.

FOGG. Bernard Thorton? I do not know him—oh, if I did!

LOUISA. She never ceased till she had traced him out—he knew this, and he murdered her.

FOGG. Oh, should I ever find that wretch! aye, and that monster, Devereaux—he who would have made me kill my *child!*

LOUISA. 'Twas he who sent me here, and bade me speak those words, little suspecting who I really was.

FOGG. I see it all—oh, villain! villain!

LOUISA. Hush! I hear footsteps! Some one comes.

FOGG. Ah, 'tis himself, 'tis Devereux. He would be certain that his work of blood was done. Leave me my child. (*picks up knife.*)

LOUISA. (*alarmed*) What would you do, my father?

FOGG. Leave me, I say, leave me. (*Music—forces* LOUISA *off, then hastens to meet* DEVEREUX, *who enters.*)

DEVER. Is all finished?

FOGG. Not all; one act of justice yet remains—your death. (*seizes him.*)

DEVER. Ah, madman!

LOUISA. (*re-entering hastily*). Great heaven! father, what would you do?

FOGG. Away, my child. Die, villain!

DEVER. So, Master Fogg, this is how you serve me, is it? but I'll soon make short work of you.

FOGG, Come on, villain, a father's arm is strong when he fights to protect his child.

DEVER. Indeed. Take that! (*suddenly stabs* FOGG, *who falls.*)

LOUISA. Monster, you have killed him. Father, father! (*crawling to him with a faint cry, sinks senseless.*)

DEVER. Now for my masterstroke; this girl once removed, Herbert and the fortune will be *scarcely* mine. A thought—I have some chloroform in my pocket—it will prevent her further interferences. (*he draws from his pocket and places it to* LOUISA'S *nostrils*) Ha, ha! now for masterstroke—the down express is due in a few minutes, and railway accidents are not at all impossible. (*raises body of* LOUISA, *places her neck across the rail*) So much for her—now to wait at a distance the consummation of my plan. (*music—he exits.*

FOGG (*reviving*). Where am I? I thought I had been stabbed, what fearful place is this, and why have they brought me here. There is a mist before my eyes, I cannot distinguish an object (*the red signal light at back is changed to green*) Where is my child gone? Oh, my old limbs are strengthless, nerveless, I cannot move. (*train is seen to pass at back—green lime light on* LOUISA) Oh, heaven, must I die, and not again behold my child! (*noise of train—red light on signal post by side of tunnel changes to white*) Where is she? I can hear the rattling of the train—but still cannot see my child. (*red glare seen in the tunnel—he suddenly sees* LOUISA) Ah, she is there, upon the rails—she will be dashed to pieces! Oh, let me save her, let me save her! (*train approaches; he just succeeds in rolling* LOUISA *from it as train dashes from tunnel and off.*)

DEVER. Ha, ha! all is over. (FRANK *enters.*)

FRANK. No, villain! you are deceived—from too great a distance to prevent it—I witnessed your crime and you shall now answer to the laws for your attempt at murder. Help! help! (*seizes him.*)

DEVER. Unhand me, or by hell I'll shoot you like a dog! (*draws a pistol and points it at* FRANK, *who seizes the barrel—a violent struggle ensues.*)

Enter YORKNEY, *with* SHABNER, RAILWAY OFFICIALS, *&c., with lanterns—the pistol goes off, killing* DEVEREUX *who falls dead—grand tableau—*FOGG *embracing* LOUISA—HERBERT *kneeling at her feet,* FRANK *standing with the pistol over* DEVEREUX.

CURTAIN.

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BITS OF BURLESQUES;

BEING EXTRACTS FROM THE

EXTRAVAGANZAS

OF

HENRY J. BYRON.

POST FREE, ONE SHILLING.

THE TITLES OF A PORTION OF THE BITS:—

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" DER FREISCHUTZ.	WIDOW TWANKAY.
" MAZEPPA.	CARRIAGE PAID.
" CORSICAN BROTHERS.	A BON MO(E)T.
" LUCRETIA BORGIA, M. D.	CLUBS.
" CAMARALZAMAN.	MAN'S ESTATE.
" WILLIAM TELL.	HOTEL CHARGES.
" MANFRED.	MY UNCLE.
ETC., ETC.,	ETC.

For Sale at 89, STRAND, *and of all Booksellers.*

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THE

LONELY MAN

OF THE OCEAN;

OR, THE

NIGHT BEFORE THE BRIDAL.

A Drama,

IN THREE ACT-.

BY

THOMAS G. BLAKE,

AUTHOR OF

"Our Old House at Home," "A Spanking Legacy," "The Cattle Stealers," "Life as it Is," &c., &c., &c.

LONDON:
SAMUEL FRENCH,
PUBLISHER,
89, STRAND.

NEW YORK:
SAMUEL FRENCH & SON,
PUBLISHERS,
122, NASSAU STREET.

353 THE LONELY MAN OF THE OCEAN.

As performed at the Olympic Theatre, 1851.

CHARACTERS.

WYNDHAM BOWYER (*the reprobate Squire of the "Broadlands Manor," and Brother to the Rover*)...	MR. NORTON.
ARNOLD HILLINGTON (*a reduced Gentleman, now owner of "Fairlight Downs" Farm.*	MR. SANGER.
LIEUTENANT ADAM BASHFORD (*a Son of the Wild and Boundless Waters—the "Lonely Man of the Ocean"*)	MR. W. FARREN.
JACK JOLLY (*familiarly called Jolly Jack—Boatswain of H. M. S. the Sea Nymph*).....	MR. C. BENDER.
CYRUS BLOOM (*a young Husbandman, in love with Becky Bowles, driven by desperation to become a Sailor*)	MR. W. SHALDERS.
MARK BELL (*a Vagrant Gipsy and Robber in the pay of Squire Bowyer*).....	MR. HARRIS.
RED MARLEY	MR. KINLOCH.
HEATHCOTE.....	MR. CLIFTON.
EVE HILLINGTON (*the "Flower of Fairlight," and betrothed Bride of Adam Bashford*).....	MISS FIELDING.
BECKY BOWLES (*a Village Coquette, with certain matrimonial scruples*).....	MISS I. ADAMS.
PEG POLLOCK	MISS WYNDHAM.

TIME.—*Present.*

COSTUMES.—*Modern in style and suited to the station and character of the persons represented.*

PROGRAMME OF SCENERY, &c.

ACT I.

SCENE I.—THE EXTERIOR OF THE FARM HOUSE.

Fields of ripened Corn; Viaduct and Railroad; with distant View of the County of Kent.

The assembling of the villagers—the night before the bridal—the rustic lovers and their quarrels—expected arrival of Adam Bashford—the twin brothers—the villagers disperse—appearance of Wyndham Bowyer—the newspaper account of his brother, the notorious pirate—the league of villany between Bowyer and Red Marley—diabolical scheme to overturn the railroad train—frustration of the plot, and the train of carriages traverses the line in safety.

354 SCENE II.—A LANDSCAPE NEAR THE FARM.

The ruffians, Mark Bell and Heathcote, lying in wait to attack Adam Bashford—he appears—the attack and overthrow of Bashford—his rescue by Jack Jolly, the true British tar—the departure for the Farm—rage of Wyndham Bowyer—the second stratagem concocted to gain possession of Eve Hillington for the libertine squire.

SCENE III.—EXTERIOR OF THE FARM (*as before*).

The happy farmer—the lucky rustic—Cyrus Bloom in his glory—his story of how the train was saved from destruction—meeting of Bashford and Eve—the merry-making—rustic dance—Jack Jolly quite at home—jealousy of Cyrus——appearance of the Squire—he demands the hand of Eve in marriage—his rejection and vows of vengeance—Jack Jolly recognizes the features of the noted pirate—the likeness explained—Cyrus Bloom's gratitude to Adam—Jack Jolly making too free—Cyrus won't stand it—approach of night—Jack Jolly's account of his courtship with one of the ladies in waiting of Queen Tommyrammyrammero—Jack's alive—the ruffians on the watch—retiring for the night.

ACT II.

SCENE I.—THE INTERIOR OF HILLINGTON'S FARM.

The happiness of the family destroyed—the abduction of Eve Hillington—her apparent cruelty to Adam—the sailor on a lee shore—Bowyer's letter—mystery upon mystery—the commission—Adam promoted to a captaincy—the instant departure in pursuit of the fugitives—Becky's determination only to marry a sailor—Cyrus's heroic resolve—another hero added to the navy of Great Britain—Becky's stratagem.

SCENE II.—CHIEF CABIN OF THE EAGLE.

Bowyer and his victim—her reproaches and determination to destroy herself by leaping from the cabin window into the sea if he dares molest her—the pirate's mistress, Helena—another victim of his brutality—story of her wrongs and shame—her vow to protect Eve Hillington—the Pirate Crew appear and threaten violence—interference of Bowyer—he is defied by his men—desperate combat and heroic conduct of Helena.

SCENE III.—BETWEEN DECKS OF THE SEA NYMPH.

Cyrus Bloom a Sailor—rather indisposed—the ship not steady—the new volunteer—Cyrus discovers another rival—the faithless Becky—"Oh! these women; these women!"

SCENE IV.—MAIN DECK OF THE SEA NYMPH.

Misery of Adam Bashford at the loss of Eve—Jack Jolly tries to cheer him, but in vain—the signal gun—the pirate enemy in sight—

preparations for the engagement—desperate sea fight, and general attack—boarding of the vessel by the pirate—overthrow of Bowyer and triumph of H. M. S. the Sea Nymph.

ACT III.

SCENE I.—MAIN DECK OF THE SEA NYMPH (*as before*).

The British sailors' triumph—the prisoners—Bashford's accusation of Eve—the trial—Bowyer condemned by Bashford to walk the fatal plank—the burning pirate ship—accidental death of Helena by the hand of Bowyer—he is precipitated into the foaming ocean from the plank.

SCENE II.—BETWEEN DECKS OF THE SEA NYMPH.

More calamities—horrible announcement that the plague is on board the ship—the doomed crew.

SCENE III.—THE DEAD CREW AND DECK BY MOONLIGHT.

Total annihilation of the ship's company, with the exception of the wretched Adam Bashford, THE LONELY MAN OF THE OCEAN!—his despair and madness—the distant ship—it approaches—the last hope shivered!

EXTRAORDINARY AND IMPRESSIVE DENOUEMENT.

355 THE LONELY MAN OF THE OCEAN.

ACT I.

SCENE I.—*Picturesque set village. Corn fields, &c., in the distance.*

Enter BECKY BOWLES *with* VILLAGE MAIDENS, U. E. L.

Chorus.

Merry and gay let us trip it away,
To the home where young Love makes his dwelling;
Let them say what they may,
On the dear bridal day,
The heart with its joy is o'er swelling.

Merry and gay, &c.

BECKY. Well, this is what I call nice. Jemima Jinks, you look like an angel—what a pretty cap, and what a duck of a ribbon! Eve will be delighted.

JEMIMA. At what? My duck of a ribbon?

BECKY. No, her duck of a sailor, who this day arrives from sea—weren't they plighted when little things? and love and constancy has been with them ever since. Ah, me! we poor girls have queer sensations before marriage, but I'm told we soon get accustomed to them afterwards—it must be an awful trial to go through. I wonder when my time will come!

Enter CYRUS BLOOM, R. 1. E.

CYRUS. Why now or never—al'us strike the iron when it be hot. Ah, girls, good morning to 'ee, it's a much finer morning this morning than it wur the morning before yesterday morning, but good morning to ye all, however! (*shakes hands round.*)

BECKY. There's familiarity! Hollo! I say, Mr. What-d'ye-call-um?

CYRUS. Becky, that ben't my name, and well thee know'st it.

BECKY. I know nothing, Mr. Thingumbob.

CYRUS. Thingumbob, and Mister, too! That girl's doomed to turn I topsy-turvey.

BECKY. Me! I don't know you, you scarecrow.

CYRUS. Come, doant'ee fling that for'ard—if I did consent to frighten away the crows from old Farmer Furrow's field it weren't for sake o' lucre.

BECKY. It was, you miser, it was.

356 CYRUS. I deny thee words; somebody said she'd come when nobody wur bye, an honest man's word be his bond, and so should be an honest woman's, let me tell'ee that Miss Becky; and you 'on't leave I a soluntary donkey again in a hurry—but we 'on't talk o' that—what the dickens be all you lasses dizened out in your best bibs and tuckers for I should like to know—I can't make it out no how soever.

BECKY. Well, Cy, you're a simple Simon; I'll be charitable and tell you.

CYRUS. That's hearty.

BECKY. Do you remember Adam Bashford?

CYRUS. Remember! I shall never forget him as long as I live.

BECKY. He seems to have made a lasting impression on you, Cy.

CYRUS. Aye; many a time he thumped me black and blue; but if he wur to thump me again and again, I'd forgive and thank him from the bottom of my heart.

BECKY. You would?

CYRUS. Aye, would I; for though as lads we were al'us snarling like curs, yet when poor mother died and there seemed nothing for her but a parish coffin and a pauper grave, Adam stepp'd for'ard and proved my only friend—I shan't forget the day as long as I live. There sat I, wi' a heart as heavy as lead—the sun's rays wur streaming through the lattice—but they couldn't cheer me—for poor mother lie dead in the shade.

BECKY. Poor Cy!

CYRUS. Aye, lass, 'tis a sad thing when death comes to the dwelling of the poor. But Adam Bashford buried poor mother like a lady, and when I see him again—but that's no matter—what about Adam, lass?

BECKY. What a ninny you are; don't you know that Adam Bashford and Eve Hillington are to be married? and, stupid, don't you know that Adam is this day expected by the train?

CYRUS. You don't say so?

BECKY. And don't you know that to-morrow is settled for the wedding day.

CYRUS. No. Tol lol lol de rol, &c. Od zookers I could lep out of my skin for joy. Tol lol lol de rol, &c.

BECKY. The lout's beside himself.

CYRUS. I believe 'ee, lass. Tol lol lol de rol, &c.

BECKY. And why?

CYRUS. Why, rat it, what a question! When Adam and Eve marry I shall be a bacheldor no longer.

BECKY. La! you don't mean to say so, Cy!

CYRUS. Don't I—but I do. Eh, why drat it, lass, thee bean't unmindful o' thy promise, be 'ee?

BECKY. What is the ninny talking about.

CYRUS. Ninny! Come, none o' that—how often have you said over and over again by the beech tree, that you and I should marry same day as Adam and Eve.

BECKY. The simpleton's been dreaming.

357 CYRUS. No simpleton ain't—a promise be a promise all the world over.

BECKY. Aye, but promises and piecrusts were made to be broken.

CYRUS. Aye, and a fond heart may break wi' 'em. Come, I see thou 'rt but joking, thou sayst this only to flusterify I a bit, ha, ha, ha!

BECKY. I never was more serious in my life.

CYRUS. Come, come, none o' that; I'm a passionable loikely chap—what can you object to?

BECKY. The Cat in Pattens——

CYRUS. Public house. Be that all, wench? Then I on't touch a skittle-ball, or smoke backy any more.

BECKY. Well, only be faithful to that promise for the next twenty-nine months——

CYRUS. Twenty-nine months! There on't be a mite o' me left by that time; I al'us frets if anything goes wrong. Twenty-nine months! I should be a dead man in the tenth o' that time. Come, come, Becky, don't tantalize—stick to thee word like a man.

BECKY. Go away, you seductive villain! you ought to be ashamed of yourself—to tamper with tender youth and innocence like mine.

CYRUS. Inno——! drat me if she beant as knowing as a fox. (*aloud*) But I say, Becky lass, be the thing all settled between Adam and Eve? for folks do say, young Squire Wyndham Bowyer be over head and ears in love wi' her, and has made her an offer, and surely she can't withstand that—to live in such a fine house as the hall, ha' her own sarvants, her yacht on the water, and such eating and drinking—that be a great temptation.

BECKY. It would be to you, you cormorant.

CYRUS. I believe 'ee, my lass—but I say what pretty names you ha' been calling I all morning—but never mind they—folks say that Eve Hillington don't dislike the squire.

BECKY. The world is given to lying, Cy; she hates the sight of him.

CYRUS. Now I can't make that out any how; for he, like I, be a very handsome fine fellow.

BECKY. Like you, you ugly monster—but handsome is as hand-

some does. Though Mr. Hillington is only a farmer, he is a gentleman bred and born, and I heard him say "his child should never be united to the richest man in the land if there was a blot on his family honour."

CYRUS. Now what did he mean by that, Becky?

BECKY. Mean, noodle! why if any portion of his family had disgraced themselves—and don't all the country know that his brother Rupert who went to sea turned out a daring and merciless pirate.

CYRUS. Ay, so they say—I remember Rupert, he wur as like squire as one pea be like another.

BECKY. He outrival Adam Bashford! no fear o' that—he don't know Eve's heart, for as the song says, the heart that loves truly, loves on to the close.

358 CYRUS. Horray! Just like yours and mine, Ha, ha, ha!

BECKY. Yours and mine! well you are the oddest noodle I ever did see. Come along, girls, let's shew our duty to Eve and our respect to her choice by being in readiness to receive him.

CYRUS. I'll join ye—but I say, Becky, remember about the skittle ball and the backy, but I on't wait twenty-nine months—I should become fashionable long afore that.

BECKY. What do you mean?

CYRUS. Mean! I should commit *sub*duction, as the newspapers has it, and carry you off.

BECKY. Carry me off! D'ye hear that girls? I should like to catch you at it. Carry me off! Carry that! (*boxes his ears*)

Exit, L., *in a rage, followed by girls—laughing.*

CYRUS. Bless her, how she loves me, though she has a queer way of shewing it, and that be truth; I'm on the heel o' ye, lasses.

Runs after them.

Music.—Enter WYNDHAM BOWYER, R. U. E., *a newspaper in his hand.*

WYND. Just when my hopes were strongest, and old Hillington seemed inclined to favour my suit with the lovely Eve, this cursed paragraph must rise to blight my fondest wishes. Rupert—daring, misguided brother—far, far at sea, you little know your desperate deeds are chronicled at home. What says the infernal paper? (*reads*) "Desperate encounter between Her Majesty's Ship, The Gipsy, and a Pirate, off the Gut of Gibraltar. Accounts have reached us of a fierce fight between The Gipsy and a Pirate—after a severe contest, The Gipsy was much crippled, and many of her crew killed. The Pirate, although hotly chased, outstripped pursuit. The commander of this formidable rover is said to belong to a highly respectable family, named Bowyer, in the West of England." This accursed account has crushed all hope; and to-day returns Lieutenant Bashford—returns—hem—doubtful; if Marley has performed his promise, his return may be questioned.

Enter MARLEY, R. U. E.

MAR. Hist, Squire!

WYND. Marley!

MAR. I've done it, Squire.

WYND. 'Tis a hellish act, I now repent me that you have.

MAR. Repent!

WYND. I thought only of him—I remembered not I perilled the lives of others who never did me wrong.

MAR. Such things happen every day. What's the upsetting of a train? Nothing—I glory in it. I like a bit of revenge.

WYND. Revenge—for what?

MAR. Didn't the railways ruin my father—who kept the Coach and Horses? He was a thriving man once, but since the rail, the Coach and Horses are gone to the devil, and the poor old buffer is in the Union. Ha, ha, ha! If the train hops over that bar of iron I placed across the line it's a miracle to me.

359 WYND. 'Tis a damning deed!

MAR. Not a mite on it. People 'll get afraid to go by 'em soon, and the good old times will come back again—short stages and "Please to remember the coachman." "Guard, guard, your honor." Ah! them blessed times!

WYND. Would that I had adopted my first plan of waylaying and disabling the sailor, so that the marriage might be prevented!—affording me time to seize on the girl and carry her in my yacht to sea.

MAR. That has been cared for—if he escape from the train (which I don't think very likely) I've some pals waiting in his path to give him a welcome home.

WYND. That were enough. Return to the spot where you placed the bar—remove it.

MAR. Easier said than done—I ain't no steam engine—I can't do miles in a minute—besides it wants but little of the time of its arrival, and for me to reach Potter's Gate. Look there, it is in sight. (*points to back*) Aha! my screamer, just as you turn that slope by Matson's Mill, won't there be a spill—look—look!

WYND. Not I—the blood curdles round my heart at the very thought in my mad love for her—how many fathers, widows, orphans, will curse him whose fiendish act had made them desolate? (*crosses*)

MAR. La, Squire, accident might do that. (*pulling out an old-fashioned watch*) Seventeen minutes past—now she can't be many seconds. (*listening*) I fancy I can hear the distant whistle—I do—I do—and look, Squire, look.

WYND. Not I! the sight would damn me. Fiend! devil that I am, I would give all that I possess could this deed be recalled.

MAR. Hooray! It's coming! Ha, ha, ha!

WYND. (*seizing him*) Silence! to your knees, wretch, and offer up a prayer for the souls of those you and I are hurrying to eternity.

MAR. She's coming past Winham Corner, then Harley's Close—There! there she is—Now for it. Ha, ha, ha!

Music—A miniature train passes rapidly across the back.

Damnation! she has passed safely. (*dashes down his hat*)

WYND. Thank heaven! Thank heaven! (*falls on his knees*)

Tableau—Scene closes.

SCENE II.—*Close Wood.*

Music—MARK BELL *and* HEATHCOTE *enter,* R., *armed with bludgeons.*

MARK. Come on, Robin, this is the spot where we are bid to wait the young sailor's coming and ask charity—sailors are very charitable; he'll give it—we must be dissatisfied—if he gives us a shilling we must want a crown, if he tips us a crown we must have a suvrin—he'll call us robbers, then our dignity is hurt and down he goes like a pair of old boots.

HEATH. (R.) I don't much like the job, for I knew Adam Bashford.

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THE

RAILROAD STATION

A Farce

IN

ONE ACT

BY

THOMAS EGERTON WILKS

AUTHOR OF

The King's Wager—The Dream Spectre—The Red Crow—Wenlock of Wenlock—Death Token—Michael Erle—The Black Domino—The Wren Boys—Rinaldo Rinaldini—Lord Darnley—The Crown Prince—Roll of the Drum—Eily O'Connor—Ben the Boatswain—Lady of Lambythe—Ruby Ring—Sixteen String Jack—Woman's Love—Scarlet Mantle—Gaspard Hauser—Raffaelle the Reprobate—Crichton of Clunie—Captain's not a-miss—State Secrets—Jacket of Blue—The Brothers—Sudden Thoughts—'Tis She—Bamboozling—Serjeant's Wedding—My Wife's Dentist—My Valet and I—Ambassador's Lady—A Mistaken Story—The Devil's In It—Seven Clerks—The Miller of Whetstone—Raven's Nest, &c. &c. &c.

LONDON:
THOMAS HAILES LACY,
89 STRAND, W. C.,
(Opposite Southampton Street, Covent Garden Market.)

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THE RAILROAD STATION.

First produced at the Royal Olympic Theatre,
October 3rd, 1840.

CHARACTERS.

MR. SAMPSON JONES.....Mr. SAMUEL ROXBY.
MR. WILLIAM SMITH.....Mr. BROOKES.
MR. CHARLES SMITH.....Mr. STOKER.
JACK ROBINS.....Mr. BALLS.
GRABBINS.....Mr. HARRY.
TRAP.....Mr. FLEMING.
SLEEPER.....Mr. SPENCER.
SHUTUP.....Mr. J. GEORGE.
MRS. WILLIAM SMITH.....Mrs. GARRICK.
MRS. CHARLES SMITH.....Mrs. EDMUNDS.
Male and Female Passengers, Porters, Policemen, &c.

TIME OF REPRESENTATION—45 minutes.

COSTUMES.

JONES.—Green coat, drab trousers, short gaiters.
WILLIAM SMITH.—Blue coat, light waistcoat, drab breeches and gaiters, low-crowned white hat.
CHARLES SMITH.—Frock coat, trousers, boots, hat.
ROBINS.—Newmarket coat, long waistcoat, drab trousers, boots, hat.
GRABBINS.—Modern suit, top boots.
TRAP.—Modern suit, shoes.
SLEEPER AND SHUTUP.—Railroad liveries.
Mrs. W. SMITH.—Flowered muslin dress, black silk mantilla, straw bonnet and feather.
Mrs. C. SMITH.—Muslin travelling dress, white bonnet, parasol, &c.
PASSENGERS, &c.—Modern dresses.

362 *This Farce is the property of Thomas Hailes Lacy.*

THE

RAILROAD STATION.

SCENE.—*The Waiting Room at the —— Station. Chairs, tables, pens, ink, papers, wine-glasses, &c.—window,* C.—*doors,* R. *and* L.

SLEEPER. (*at window*) Stand out of the way, there! the train will be here directly.

SHUTUP. (*without,* R.) This way, sir, this way!

SHUTUP *passes window and enters at* R. D.

This is the waiting-room—the train will be here directly.

Exit at R. D. *after having shown in* MR. SAMPSON JONES, *who enters slowly, staring round.*

JONES. Bless my soul alive! what a wonderful place! What a deal of money it must have taken to build it—so extensive, so grand! What a nice room this is—the nicest room I ever saw! I'll be bound there isn't such a room in all the village of Tinkerton, where my establishment is. What would Mrs. Jones say if she could see it?

SLEEPER. (*at door*) Do you expect anybody by the next train?

JONES. Yes, I expect my father.

SLEEPER. Then you had better look out, for the train is coming. (*bell rings.*

JONES. Ah, the train coming? Now I wonder whether my father is in it! Haven't seen the old gentleman for many a long year—and now he's coming all the way from London on
363 purpose to visit me, and writes to tell me to be sure to meet him at the Railroad Station, lest he shouldn't find his way, so here I am. Oh, ia! there's the train. (*whistle of engine is heard—the noise of the carriages, and the train is seen to pass swiftly by the window*) Well, I declare, it almost takes away one's breath to look at it! What would Mrs. Jones say to that?

VOICES. (*without*) The Royal Hotel! Dee's Hotel! Saracen's Head! The Union! The Nelson! St. George's Tavern! (*noise.*

JONES. There's a row! (PASSENGERS *pass the window*) What a crowd of people! It's positively astonishing! I wonder whether my old father is amongst them or not? Crikey, what a lot of folks! Formerly, the coach used to be very well loaded with fourteen passengers, but now they come four hundred at a time, and room to spare? What would Mrs. Jones say to that? (*goes to window*)

Enter MRS. CHARLES SMITH, R. *door.*

MRS. C. At last we have arrived! I hope Charles is waiting for me, and then this plague will cease. I don't know anything more provoking to a pretty young woman—and that everybody allows I

am—than when she is travelling without a male friend, to be subjected to the attentions of some stranger. All the way from London have I been suffering such an affliction from the disagreeable young man who sat opposite to me. I am sure if impudence will gain a point, he must win everything he tries for—I never saw the like of it. However, it's over now, thank goodness, and I must look out for Charles.

Enter JACK ROBINS, *hastily, at* R. *door.*

ROBINS. Which way did my goddess go? Surely I have not lost her?

MRS. C. Oh, gracious me! if he isn't following me here.

ROBINS. Ah, there she is! Sweet lady, I feared I had missed you. Pray take my arm—nay, I beg!

MRS. C. Sir, I beg I may not be teased any longer with your troublesome attentions.

JONES. (*at window*) I don't see anything of the old buffer!

ROBINS. My dear madam, pray don't name it. Consider, we are fellow travellers; only call to mind the many miles we have come together—the many risks we have run in each other's company—of the engine bursting—the carriages getting off the rail—the—(*suddenly kisses her hand—she snatches it away angrily.*)

JONES (*turns at the same moment*) Oh, dear! they're making love at a railroad pace. What would Mrs. Jones say to that?

MRS. C. Once for all, sir, I tell you I am a married woman.

364 ROBINS. Never mind that, I'm not particular.

MRS. C. And I every moment expect the arrival of my husband.

ROBINS. That's another matter. If your husband comes, I give you up, but under no other circumstances whatso-ver will I do anything of the kind. No, dear madam, love at first sight, that soul-conquering passion, has taken entire possession of me, from the *os frontis* to the *tendon Achilles.* (*aside*) Now for a figure of speech. Yes, madam, the native of the "sweet south," or he who drinks train oil at the Northern Pole, are all—Hollo! there's somebody taking away my trunks. Stop, stop! that's my box.

Exit hastily R. *door, and passes window, to* L.

MRS. C. What shall I do? The addresses of this young man are quite intolerable! and besides, Charles is so very jealous—if he sees anything of this, there will be such a disturbance, and, perhaps, a fight. What shall I do! Ah, he's coming back I declare! That's a very respectable middle-aged gentleman at the window, I've a great mind to ask him to interfere! I will.

JONES. I'm almost certain the old boy isn't in this train.

MRS. C. It's very awkward, but I must do it. Sir, sir!

JONES. (*advancing,* L.) Ma'am, your servant!

MRS. C. (C.) I shall feel particularly obliged, sir, if you—if you——

JONES. If I—I——

MRS. C. The fact is, sir, that—that—to come to the point, did you observe a young man who was here just now?

Defendants' Exhibit London by Night. 626

No. 721. COMPLETE. One Penny.

DICKS' STANDARD PLAYS.

LONDON BY NIGHT.

No. 265 Webster v. Daly } p. 365.

BY CHARLES SELBY.

627

628

ORIGINAL COMPLETE EDITION.—PRICE ONE PENNY.

*** This Play can be Performed without Risk of Infringing any Rights

London: John Dicks, 313, Strand; W. Clarkson, Theatrical Wig Maker, 45, Wellington Street, Strand; and all Newsagents.

635

LONDON BY NIGHT.

A DRAMA, IN TWO ACTS.

By CHARLES SELBY.

First Produced at the Strand Theatre, January, 11th, 1884.

No. 265
Webster
Dicks

636

637

Dramatis Personæ.

[*See page* 5.

FAIRLEIGH (a Kentish Banker and Merchant) ..... Mr. Broadfoot.
HENRY MARCHMONT (a Naval Officer) ..... Mr. John Webster.
FRANK MARCHMONT (his Profligate Brother) ..... Mr. Roberts.
HAWKHURST (a Character not unknown to the Police) ..... Mr. Searle.
SHADRACK SHABNER (a Bill Discounter of the Hebrew Persuasion) ..... Mr. H. Lee.
ANKLE JACK (a Shoeblack) ..... Mr. Cockerill.
NED DAWKINS (a Member of the Cadging Fraternity) ..... Mr. Saunders.
——— or DOGNOSE (the Dram drinker) ..... Mr. H. Hall.
LOUISA GRAY (an Orphan, deserted and betrayed) ..... Miss Walcott.
Police, Cadgers, Wedding Guests, Railway Servants, Guards, &c.

TIME OF REPRESENTATION.—One Hour and Forty Minutes.

No. 721. Dicks' Standard Plays.

JONES. A young man? I did. (*winks*) I know, but what I know, I never say. You may confide in me—although I cannot pretend to say what Mrs. Jones would say to it.

MRS. S. You mistake, sir.

JONES. Well, really, I don't think that's very easy after what I saw.

MRS. C. That young man is a perfect stranger to me, and intrudes himself very much upon me. Now I am without a male friend here, and, therefore, take the liberty of requesting your protection from his insults.

JONES. Madam, consider it done—I'll put a stop to all this very quickly. The moment he makes his appearance I'll silence him. (*aside*) I've taken a very pretty young woman under my protection. What would Mrs. Jones say to that?

ROBINS *passes the window*, L. *to* R.

MRS. C. Then here he is, sir. Sir, I rely upon you!

JONES. Madam, you shall find that I never forget my word. (*passes her to* L. D.) The Jones's always keep their promises.

Exit MRS. C. SMITH, L. *door as*

(Here follows Defendants' Exhibit "London by Night," marked pp. 365 and 366.)

367 COSTUME.

FAIRLEIGH.—Black coat, black trousers, white cravat.

HENRY MARCHMONT.—1*st Dress:* Blue uniform coat. 2*nd Dress:* Modern private costume.

FRANK MARCHMONT.—1*st Dress:* A very shabby plain suit. 2*nd Dress:* Fashionable dress coat, vest embroidered, black dress trousers. 3*rd Dress:* Frock coat, white vest, lavender trousers, and dress boots.

HAWKHURST.—Drab fashionable overcoat, elegant waistcoat, light gray trousers, French boots and hat, moustaches and pointed beard from under the chin, or short crop wig, large whiskers.

SHADRACK SHABNER.—Fashionable claret frock, with velvet collar and cuffs, plaid trousers, extravagant satin coloured stock, very large pearl pin, white silk hat, extremely large brim.

ANKLE JACK.—1*st Dress:* Short corduroy trousers, ragged shirt, crushed hat, very dirty and much torn. 2*nd Dress:* Black trousers, very large white waistcoat.

NED DAWKINS.—Indiscriminate ragged dress.

DOGNOSE.—Ragged brown great coat, trousers broken at the knees, iron gray wig, matted; his whole appearance betokens the most abject misery.

LOUISA GRAY.—1*st Dress:* Brown stuff dress, dishevelled hair. 2*nd Dress:* White muslin.

STAGE DIRECTIONS.

EXITS AND ENTRANCES.—R. means *Right;* L. *Left;* D. F. *Door in Flat;* R. D. *Right Door;* L. D. *Left Door;* S. E. *Second Entrance;* U. E. *Upper Entrance;* M. D. *Middle Door;* L. U. E. *Left Upper Entrance;* R. U. E. *Right Upper Entrance;* L. S. E. *Left Second Entrance;* P. S. *Prompt Side;* O. P. *Opposite Prompt.*

RELATIVE POSITIONS.—R. means *Right;* L. *Left;* C. *Center;* RC. *Right of Center;* LC. *Left of Center.*

R. RC. C. LC. L.

*** *The Reader is supposed to be on the Stage, facing the Audience.*

368 LONDON BY NIGHT.

ACT I.

SCENE I.—A London Railway Terminus (exterior), the stage filled with passengers—newspaper boys calling out the names of their papers—shoeblacks following their occupation—vendors of fruit and cigar lights—porters with luggage—railway and engine heard without—the scene, in fact, to realize the arrival of a train. HENRY MARCHMONT appears among the *the* crowd directing a porter, who carries his luggage on a truck.

HEN. Convey my kit to the Europa Hotel, and return to me here, for I shall require further assistance with the cargo I've left in the storeroom.

POR. Ay, ay, sir. I'll be there and back in a jiffey.

JACK, (coming up to Henry and touching his hat.) Clean your boots, your honour? Only a penny!—put on an extra polish——

HEN. Eh, what! I can't be mistaken! Your face should be known to me. Why, you're Jack——

JACK. Yes; and you're Henry Marchmont, my old school-fellow, who used to pitch into all the big boys that pitched into me. Tip us your fist. I see you are not too proud to shake hands with an old pal who has seen better days.

(They shake hands.)

HEN. No; a true seaman never turns his back when the wind of adversity blows in his teeth.

JACK. Ah! I heard you'd gone for a sailor.

HEN. Yes; I've only just arrived from a long voyage.
369 Since last I saw you I have traveled far and wide. My father dying in China I have returned to England, from which love had driven me.

JACK. Love! you don't say so?

HEN. Yes; love for a young, innocent, beautiful girl. I could not declare to her my passion, because I felt myself unworthy. I quitted London, bearing the sweet remembrance of Louisa in my heart. Her name whispered hope and comfort to my soul in the dreary watch, the howling storm, the raging battle! When the shots fell like rain, and death stared me in the face at every turn,

the thought of her enabled me to overcome any obstacle, surmount every danger, and secure a fortune which I might lay at her feet.

JACK. I see how it is; you are now steering for the haven of happiness, and having passed the barrier, will drop anchor in the smooth waters of contentment.

HEN. No; the broad arrow is branded on her name, and my anticipation a dream. On reaching my native shore, I learned that a more favoured rival has taken advantage of her weak, credulous and unsuspecting disposition. Louisa is betrayed to ruin, shame and dishonour—she who would have shared my name and wealth is not the wife, but the mistress of another man!

JACK. Do you mean to follow up the guilty pair?

HEN. Not I! Let the frail one follow her own bent; I am too old a salt to allow myself to drift on the quicksand of woman's perfidy. I have returned to London to seek an only brother that I have not seen for many years, and who, by this time, must be a wealthy and prosperous man.

JACK. I know, and still know him well, but regret to say with regard to his circumstances you are quite in the dark.

HEN. What do you mean?

JACK. My meaning will soon be made plain enough. When
370 your brother came to London, he lived like a lord. He kept a carriage, gave dinner parties, and acted like a real gentleman—as he was. But he who goes beyond his means is sure to find a balance on the wrong side of the account, and poor Frank learnt this truth by experience. He is now without a penny, and the associate of some of the worst characters in the metropolis.

HEN. If you know his haunts, you shall conduct me to them—for in spite of his faults—his crimes, I feel it is my duty not to abandon him in extremity. Meet me after dusk at my hotel, and we will talk this matter over more fully. Ah! the porter returns for the remainder of my luggage! I must accompany him, for I have some valuables among it.

[Henry Marchmont follows Porter.]

Enter HAWKHURST and SHADRACK SHABNER—ANKLE JACK meets them.

JACK. Clean your boots, gents!—clean your boots!

SHAD. I always clean my own.

JACK. Clean your boots! clean your boots!

HAWK. Hang the fellow! His noise goes far to crack the drum of my ear. Ah! Ankle Jack!

JACK. Hawkhurst! (Aside.) I'd better mizzle! I wonder what he's up to?

[Sneaks out.]

SHAD. Now, Mr. Hawkhurst, as I am a man of business, let me know yours at once. You wrote to me, and——

HAWK. I am about to confide an important secret to your keeping.

SHAD. Is it safe to do so?

HAWK. Yes; for if I saw the slightest sign of your betraying it,

I should peach—and Shadrack Shabner might chance to pay a visit to one of the penal settlements.

SHAD. There, there, Mr. Hawkhurst, that'll do! I never in my life injured anybody, unless——

HAWK. It suited your purpose; but that is neither here
371 nor there, so I'll proceed with my communication. I wrote to you from Canterbury to lend me some money upon my word alone.

SHAD. You did; but I was afraid the security wasn't very good.

HAWK. On receiving a refusal, I was at a non-plus. I wandered to the outskirts of the city without a shilling in my pocket. Suddenly a house presented itself to my view—dark thoughts prompted me, and I cleared the garden wall at a bound.

SHAD. You had your tools with you?

HAWK. I never travel without them. I was not disappointed with the "squeeze," for entering the first room, I discovered an open cabinet with a bowl of silver coin.

SHAD. Providence is bountiful.

HAWK. I was disturbed as I took the money, and was compelled to leap through the window to prevent my detection. On returning to my lodgings, I unrolled my booty, which I had enveloped in the first piece of paper I felt under my hand; this turned out to be a letter addressed by one bearing the name of Marchmont.

SHAD. Marchmont! How singular! Had you the curiosity to read this same letter?

HAWK. Yes; it was dated China, and the contents gave me to learn that Henry Marchmont was destined to become the husband of the only daughter of the wealthy Kentish banker, Fairleigh?

SHAD. Fairleigh—um—yes—he stands well in the city.

HAWK. Old Marchmont had sanctioned by writing the union on his death bed. The singularity of the name caused me to think of Frank Marchmont, whom we both know so well; he was the younger of the two brothers, and I was informed further by the letter that the intended father-in-law was acquainted with neither the one nor the other.

SHAD. Well, what then?

372 HAWK. A glorious scheme then developed itself to my teeming brain—though in semblance I had stolen a few shillings, I had in reality purloined more than a million. Disguised, I sought the banker Fairleigh, and represented myself as the friend of Henry Marchmont returned from China, and whom I added was detained in London by pressing business; my story, plausibly told, took the old gentleman off his guard, in fact, so much so, that he will come to London to conclude his daughter's marriage.

SHAD. But suppose the bird shouldn't come, Mr. Hawkhurst.

HAWK. He is come, and by this time is comfortably seated with his daughter in the Europa Hotel; our next business must be to find out Frank Marchmont, and bestow on him a rich bride and a handsome dowry—the dowry we share together.

SHAD. Of course. People can't be expected to take all this trouble for nothing.

HAWK. By the bye, Shadrack, you must shell out at once for contingencies.

SHAD. So I expected. Well, well—here's a couple of fivers.

HAWK. I must have a hundred pounds at least.

SHAD. One hundred pounds, Mr. Hawkhurst? I never heard of such a sum.

HAWK. You hear of it now. To carry out our plan successfully, I must provide our dupe with dress, cash, and all the requirements of a gentleman—so dub up!

SHAD. How much did you say?

HAWK. One hundred pounds.

SHAD. Don't you think fifty would do?

HAWK. I must have a hundred.

SHAD. The game is hazardous, and I——

HAWK. There is no risk—for every shilling you advance you will receive a thousand back; but time is on the wing, fetch the
373 sum I have asked for, while I seek the man who shall make our fortune.

[Music.—Hawkhurst and Shadrack go off—The bustle of another arrival of a train—The stage is cleared to

SCENE II.—The banks of the Thames and Adelphia Arches by moonlight. Craft moored in the river. Waterloo Bridge in the distance. NED DAWKINS and numerous vagrants discovered—some are sleeping, some playing at dominoes, some smoking. Cadger's Chorus as scene opens.—Whistle.

NED. Ah! that's Ankle Jack—I can tell his whistle from a hundred. Come along, my pippin. Here's prog and gatter in galore for an old pal. (Enter ANKLE JACK down the archway.) Ha, Jack, how goes it tonight?

JACK. Plummy and slam! How do you feel?

NED. Not quite up to the knocker——

JACK. Why, what's in the wind, my rum cull——

NED. If things goes on this way I shall soon find myself in the Bankruptcy Court, or——

JACK. Or some other court. How did this misfortune happen?

NED. I gave too much credit.

JACK. That's a good un—a crossing-sweeper giving credit!

NED. Yes; it's the ruin of business! The reg'lar customers with clean boots pays well, but when it comes to premiscous customers, it's quite t'other way. "Remember the sweeper," says I. "Never forget you," say they. "Got a copper for the sweeper," continues I. "Got no change—pay when I comes back!" Catch 'em coming back! I've got more nor a £100 bad debts owing me that way!

Enter FRANK MARCHMONT at back.

JACK. Ah! who goes there.

374 FRANK. A friend and comrade, if a residence in these dark and wretched haunts can entitle you to call me so.

JACK. We are poor, unfortunate, and——

FRANK. I, too, am unfortunate, or say rather, guilty, for my errors have brought me misery, penury, and shame. Till I fell in with you I had not tasted food for two days, and but for you, I might have perished with want in the streets of this opulent city?

NED. Never say die! is the cadger's motto. You shall regale, now; we are going to sit down to supper, and so far as an ingum, pannum, and cheese, and a drop of heavy goes, you are perfectly welcome.

FRANK. My abject necessities compel me to accept and thank you for such generosity.

JACK. Our fare is homely; but you possess in hunger a sauce that an alderman's table might envy. We're rough spun, but always go upon the same tack—that is, if we can't bring our means to our wishes, we can keep our wishes down to our means, and that comes to the same point, namely—content.

(Music—All seat themselves and eat—ANKLE JACK beckons on HENRY MARCHMONT, disguised and poorly clad.)

JACK. All right, I've dropped upon him!

HEN. And is it among the forlorn creatures that I see around that I am to find my unhappy brother?

JACK. Yes, he's at present busily engaged, but will make his appearance shortly. For eight days he has associated with this rude fraternity.

HEN. I cannot brook delay! Let me at once see Frank, that I may take from him this haunt of wretchedness!

JACK. No! in doing so you will defeat the object I have in view.

HEN. What object?

375 JACK. I have by mere accident found out that we are not the only persons who are seeking him.

HEN. What do you mean?

JACK. That there are two others on the same errand as ourselves.

HEN. Who are they?

JACK. Jonathan Hawkhurst and Shadrack Shabner.

HEN. I do not know these individuals.

JACK. But I do, and for two of the greatest scoundrels in London! Hush! talk of the devil they say, and his imps appear, for the very men of whom we have been speaking are coming down the alley-way. Let us stand back and watch their movements, there's mischief brewing as sure as there are fish in the sea.

(Henry and Jack retire—the Cadgers rise simultaneously.)

NED. Hark! footsteps! The police! No—two strangers!

Enter HAWKHURST and SHADRACK.

SHAD. Don't disturb yourselves, my dear boys, we're on the square—not on the cross—and——

NED. No gammon.

SHAD. No gammon, upon my honour.

NED. Oh, let me touch my castor—(Aside.)—His honour, I wonder

the word didn't stick in his throat and choke him. (Aloud.) Then what's your little game, Smouchy?

SHAD. That's impolite—my business is told in a few words—I and this gentleman are in search of a scapegrace.

NED. Scapegrace—there ain't no such person here—we're all respectable people——

HAWK. Tell me, my good fellow, have you not among you a young man of good figure and good looks?

NED. To be sure we have.

HAWK. Where is he?

NED. Here. I'm the covey indicated.

376 HAWK. No, no, I allude to an associate who answers to the name of Frank Marchmont.

FRANK. (Coming forward.) I am Frank Marchmont—what do you want with me? Ah, Hawkhurst—Shabner.

HEN. (Aside.) 'Tis indeed my brother.

FRANK. Your presence here, I fear, bodes me no good.

SHAD. How we are deceived by appearances—we come to do you an important service.

HAWK. Can we speak with you alone?

FRANK. I know not whether I dare trust you?

HAWK. If you doubt us, we can depart, but you will remain without the information that leads to the high road of fortune.

FRANK. Sincerity prompts such words—friends, leave us. (The Cadgers retire.) Now, you can speak with freedom—what brings you here?

HAWK. A friendly purpose—we would exchange your rags for better clothing, in order that tomorrow you may enjoy the luxurious life you have quitted but lately.

FRANK. You are mocking me.

HAWK. I do not jest, I assure you. Shabner, for once in his life, is about to be generous. You will have the command of his purse-strings.

SHAD. Yes, yes, I shall not object to a few hundreds. You must appear with an equipage of course.

HAWK. You will live *en prince*—you will have——

SHAD. Apartments in the best hotel.

HAWK. A box at the opera.

SHAD. A seat in Parliament, and——

HAWK. Wealth unlimited.

FRANK. Stop, stop—I know you too well to suppose you will confer all these favors without your interest being concerned. Tell me, then, without prevarication, what hellish deed you expect me to perform for these obligations?

377 HAWK. You may accomplish all we shall ask, without crime, dishonour, or bloodshed. Come with us and you shall judge for yourself. We shall leave it for you to ratify or destroy the compact.

[Music.—Exeunt Frank, Hawkhurst and Shabner.]

HEN. (Comes forward.) 'Tis evident they meditate some infamous scheme—we will apprise the authorities, and——

JACK. Perhaps spoil all—leave the matter for the present in my hands, and who knows but these sons of *Lucifer* may find a *match* in Ankle Jack.

[Runs off.

During the above, LOUISA has appeared at back.

LOU. My sufferings have made me desperate, and I must no longer hesitate. Abandoned, without hope, let these flowing waters become my grave! Heaven pardon this dreadful crime, and forgive the hapless woman who wishes to die!

[Louisa throws herself into the water—Henry, paralyzed, witnesses the act.]

HEN. Help, help, for mercy sake! There is a woman drowning! Is there no one to aid her?

DOGNOSE. (On bridge.) Yes, here is one, the drunkard Dognose!

(Dognose leaps into water—The Cadgers group—Lights on the stage—Henry puts off in a *in a* boat—Dognose, bearing Louisa, swims towards it—Tableau as scene closes.)

SCENE III.—A Dilapidated Garret.

Enter DOGNOSE, still bearing LOUISA insensible in his arms, and HENRY MARCHMONT—Louisa recovers—they place her on a chair.

LOU. What place is this? Where, where am I?

HEN. With friends. Do you not recognize me? I am Henry Marchmont.

LOU. Yes, I remember all now—you have saved my life; but I cannot thank you, for I wished to die.

HEN. Suicide is a terrible crime.

LOU. Alas, you know not my sorrow, my suffering! Destitute of relations and friends, I consented to place my love and
378 honour in the hands of one who became my only consolation in the hours of tribulation! The act was guilty and Heaven meted out its punishment.

HEN. You loved this man?

LOU. Yes, his language, sweet and gentle, won my heart. I, a friendless orphan, believed his vows, and under a promise that I should become his wife, consented to accompany him to London. Here, in the whirl of gaiety, I learnt that he had become a confirmed gambler, and that his passion for play was so overwhelming and irresistible, as to subvert every good resolution.

HEN. He, then, upon whose plighted word you had implicitly relied, was ensnared by toils from which a woman's affection failed to deliver him.

LOU. Our resources diminished at last; gaunt poverty stared us in the face, and my needle procured us bread. I laboured night

and day for a scanty pittance; but I worked cheerfully, for I worked for Frank alone.

HEN. To abandon you after such devotion was the act of a coward and a scoundrel.

LOU. For eight days he was absent. I became restless and unsettled; I sought my bed each night to think, but not to sleep; I thought he would return, but I pondered to meet only disappointment. In a paroxysm of despair, hopeless and blighted, I saw relief only in self-destruction.

HEN. All hope is not yet annihilated. I feel that the good genius of Frank Marchmont has not deserted him, and that he has yet force enough to shake off his thraldom. Calm your fears; you shall again behold my erring brother, and shall become his wife.

LOU. Bless you for those words! And you who saved me——

DOG. Saved you? Yes, you were too young to die. You resembled her, too. Ha, ha, ha!

LOU. Why does he laugh so terribly? He appears to——

379 HEN. Hush! he is deeply to be pitied; his reason is impaired by drink and affliction. In that vacant stare lurks grief and remembrance of the past.

DOG. (Musing.) Yes, there she lays, the pride of my heart, cut off in the morning of life, in her bloom and beauty, destroyed by him, the villain who—oh! madness is in the thought—I must have drink to quench this fire of the brain, to dissipate anguish. (Laughs wildly—Henry puts money in his hand.) Money! Good—it will buy brandy. I love brandy—I love brandy.

ANKLE JACK appears.

JACK. I thought I should find you here, and you see I'm not mistaken. I've good news—I may say rare news.

HEN. Speak, and quickly.

JACK. I've discovered the rascals, their project, and their victim, who is no other than your friend, Mr. Fairleigh.

HEN. Can this be true?

JACK. Oh, I had it on the very best authority; leave Ankle Jack alone for nosing out a secret. Hawkhurst and the infernal Jew intended to make a good thing of it, but I fancy we shall spoil their pretty little game.

HEN. Acquaint me at once with the particulars of the plot you have spoken of.

JACK. Well, as Mr. Farleigh is what the world calls "warm," his newly found friends are about to appropriate a portion of his capital to their own use, and as to Frank——

HEN. My brother.

JACK. Yes, he's going to marry the banker's daughter.

LOU. Frank marry another—can he be so base?

HEN. Be calm, this marriage will not take place; acquainted with the whereabouts of these desperate men, I possess the means of foiling their plot even at the moment of its consummation. Louisa, you must remain here till you hear from me further. Ankle Jack—quick—follow me.

[Exeunt opposite sides.

380 SCENE IV.—The handsomely furnished saloon of a Cafe Restaurant in the neighborhood of Leicester Square.

Enter HAWKHURST, SHADRACK and FRANK, elegantly dressed.

FRANK. Before I proceed further in this matter, you must explain everything, as you promised—tell me, why do I find myself in the midst of this luxury and pleasure?

HAWK. Frank, my dear fellow, you really are doing your old friends an injustice to distrust them. Have we not hitherto kept faith with you? You possess an equipage that puts Rotten Row to blush. You have money, clothes, and will soon be heir to eighty thousand pounds; if these are inadequate to your desires, I must confess you are a man more difficult to please than myself.

FRANK. I am quite satisfied with my good fortune, Jonathan Hawkhurst, but simply wish to know at what price I purchase it.

HAWK. Your name.

FRANK. My name, I don't understand you.

HAWK. You must put your signature to a marriage contract.

SHAD. Yes, the bride is a lovely creature, and but for conscientious scruples I should have made her my wife.

FRANK. What you demand is impossible—Louisa yet lives.

HAWK. Psha-, Louisa can still remain your mistress.

FRANK. Withered be the tongue that profanes her name. She is an angel of goodness, and loves me still only as a heart like hers can love, well do I remember when first I pressed her to my bosom and asked if she would be content to follow the star of my destiny her gentle murmur of "I will." Oh, why did guilt with face averted impress on mine the brand of infamy?

HAWK. Are we then to understand that from a false sense
381 of delicacy you refuse the dowry we offer to you?—remember that with eighty thousand pounds you render yourself, Louisa, and your two friends here happy.

SHAD. Yes, take your friends into consideration by all means.

FRANK. I cannot consent.

SHAD. Don't say that, there's a dear boy, or you will drive me to the cruel necessity of suing you for damages and goods ordered.

HAWK. Reflect. Would you return to the misery from which we have taken you?—poverty and disease, a bed of straw, and a wretched death. Come dispel the darkness which hangs over you—act with determination while fortune smiles. The father of the bride is within.

SHAD. Yes, the good Mr. Fairleigh—a very worthy man—just like myself.

FRANK. What! wed with Mr. Fairleigh's daughter? Do you not know she was the intended of my brother Henry?

HAWK. You are overscrupulous. Your brother is in China, where he has, so I am told, acquired wealth through the agency of a lady who will shortly become his wife. Knowing this, why should you hesitate?

SHAD. You may depend upon it, your brother will be much obliged to us all for taking Miss Fairleigh off his hands—so, as we

may consider the matter now settled, we will, if you please, proceed to complete our final arrangements.

FRANK. What arrangements?

SHAD. Merely a bond to——

FRANK. (Snatching the bond which Shadrack has produced, and reading it.) What! a bond for forty thousand pounds.

SHAD. Don't be alarmed, my good young man. We shan't expect a penny till you touch the money.

FRANK. The sum is exorbitant.

HAWK. You must remember that it is by our means alone you are enabled to mount this ladder of fortune

382 SHAD. Yes, my dear creature, you see how we have your interest at heart.

FRANK. But suppose circumstances arise by which the marriage may be prevented.

HAWK That is improbable—I may say, impossible. Decide at once—is it to be wealth or poverty?

FRANK. (After a pause.) Wealth.

HAWK. Then sign the bond.

SHAD. Yes—sign; that's most essential—(aside)—for a court of law.

FRANK. Give it to me.

(Music till the end of the scene—Frank reads and signs the paper.)

HAWK. Caught it in the toils—the bird is ours.

FRANK. I have given my name in full. To whom am I to deliver the document?

HENRY. (Appearing suddenly.) To your brother, Henry Marchmont.

(Henry snatches the bond before Hawkhurst can take it. Picture as the scene closes.)

SCENE V.—Exterior of the Café.

Enter HAWKHURST and SHADRACK, hurriedly.

HAWK. Confusion!—they have escaped us.

SHAD. There's the other door. Suppose we——

HAWK. No, that only leads to a blind alley. There's no outlet that way.

SHAD. Why not call a cab and follow up the pursuit.

HAWK. It would be useless. We cannot tell the direction they have taken.

SHAD. The return of his brother from China at such a moment is most unfortunate. I'm afraid the game's up. (Aside.) Oh, Shadrack, Shadrack Shabner, why do you let the milk of human kindness flow so freely in your tender bosom? I oughtn't to have advanced so much money without proper security.

383 HAWK. Hell's curses! to think that after all my precautions, I should be thus entrapped! (Turning fiercely on Shad-

rack and shaking him.) It's all your fault, you shaking coward. You should have closed with the one as I attacked the other. I've a great mind to shake the life out of you.

(Throws off Shadrack.)

SHAD. Confound his headstrong temper! how he has rumpled the clean shirt I put on only an hour ago! Really, Mr. Hawkhurst, I cannot imagine why I am treated in this manner. I hope that in future you will guard against——

HAWK. Keep quiet fool! My head's at work.

SHAD. Fool! Mr. Hawkhurst, you know me better.

HAWK. I beg your pardon; I should have said rogue. (Muses.) Yes, I must resort to artifice—then violence. I have the means, and will employ them. Shabner, all is not yet lost; there remains but two obstacles to our success.

SHAD. Two obstacles?

HAWK. Yes—the girl Louisa and Henry Marchmont. Both shall be removed. A desperate man resolves and acts.

SHAD. Jonathan Hawkhurst, you're a clever fellow; and were I not so extremely sensitive, I should admire your courage and cunning.

HAWK. Quick!—follow me! We must not trifle with time in this affair.

[Exeunt.

Enter FAIRLEIGH.

FAIR. So the paper and contract are all regular, says the lawyer. Good! Then tomorrow the affair will be terminated, I hope, to the satisfaction of all parties concerned. My daughter will make a charming bride, Henry Marchmont a handsome bridegroom, and I—(clock strikes.) Five o'clock! Bless me! so near the hour I appointed to dine with Mr. What's-his-name. I shall never get dressed in time. Ah, the thought of this marriage has well-nigh driven every other out of my head.

(Re-enters cafe.)

384 SCENE VI.—A Back Room in a Public House in the Borough. A group of low persons discovered seated, drinking, smoking and gambling, as the scene opens.

CHAIRMAN. Gentlemen, give your orders—the waiters are in the room.

(Orders are given for rum hot, two pickwicks, ale, stout, &c.)

Chair, gentlemen—chair! Mr. Nobley Cole will give a song.

(Uses his hammer.)

OMNES. Bravo—bravo! He's a stunner, he is!

NED DAWKINS. (Entering.) Yes, Nobley's fust-rate. He beats Ward into fits and Herring into convulsions. His doing a hornpipe on his nut upside down is the most wonderful effort of genius I ever witnessed.

CHAIR. Order and harmony, if you please, gentlemen.

(He plies his hammer more vigorously than ever. At its conclusion, enter HAWKHURST and SHADRACK.)

SHAD. I'm afraid, Mr. Hawkhurst, your plan is attended with considerable danger.

HAWK. May be so; but it will rest with me alone. Should I need your assistance, you must not fail to give it; but I shall not trouble you unless it is absolutely necessary. If I only make sure of Henry Marchmont, we shall yet pocket the eighty thousand pounds.

SHAD. Will he come to your appointment, think you?

HAWK. I have sent Ankle Jack with a message that compels him to keep it.

SHAD. But why have you chosen such a strange meeting-place as this?

HAWK. Because in this place he will be without a defence, and surrounded by those who are devoted to my cause. Besides, I have other motives.

SHAD. Other motives.

HAWK. Yes, which it is as well not to divulge under the present circumstances.

Enter ANKLE JACK.

JACK. What a rum place for an appointment! But I suppose they know their business best. I don't think much of the company I see hanging about; they may be very respectable, though they have more or less the appearance of pickpockets.

HAWK. Will he come?

JACK. Yes; he'll be here in a minute. I've made it all right with Mr. Marchmont.

HAWK. (To Shabner.) Get rid of this idiot.

SHAD. How am I to do it?

HAWK. Let me see. Ah, I have it! Entice him into yonder bar—then make him drunk.

SHAD. Here, young man, if you've no objection, we'll have a glass of brandy-and-water. Follow me!

[Shadrack and Jack go off.

Enter HENRY.

HAWK. Mr. Marchmont. I am glad to find you are punctual.

HEN. This is a strange place to appoint a meeting.

HAWK. Not so strange as it may appear, as you will find before we leave.

HEN. Let us at once to business, if you please. You say the honour of my brother is yet in your hands. I would prove the truth of that assertion.

HAWK. You are looking suspiciously around. You need be under no apprehension.

HEN. Fear is the word omitted in a seaman's vocabulary—therefore let me hear what you have to say.

HAWK. I will be brief. In the first place, you have interfered

with an arrangement between myself and your brother, Frank Marchmont.

HEN. It was a compact sealed by shame, disgrace and infamy, which I refused to sanction.

386 HAWK. I have yet to learn that your sanction was required.

HEN. I might have expected sarcasm from one who has acted most unjustly towards his dupe.

HAWK. I am at a loss to arrive at your meaning.

HEN. Then I will speak more freely. You have encouraged the weakness and folly of my poor brother for your own ends—you have placed temptation in his path, and would have completed his ruin by surrounding him with vicious associates.

HAWK. You have painted my portrait, whether it is true or not I leave others to judge—but we are wasting time. I must beg of you to deliver up the document you snatched from my hand a few hours since.

HEN. Say, rather, you exact it.

HAWK. Precisely so. (Henry about to go.) Stop, you must not leave me thus. (Detains Henry.)

HEN. This is madness!—would you use violence in a place of public resort. (Approaches door against which Ned Dawkins is leaning smoking.) Ah, you have your myrmidons here! But surely some one will aid me. Gentlemen, will you permit this ruffianism in your presence! (Struggle and pause.) They heed me not—accomplices, one and all!—into what a snare have I fallen.

HAWK. Again I demand the paper. Return it to me, or you are a dead man before you are five minutes older.

HEN. Never will I leave you free to consummate my brother's ruin, and rather than yield it, shall my heart's blood flow like water from a running spring.

HAWK. For the last time I ask——

HEN. Villian! you are at present all-powerful, I defenceless; but Heaven, who watches over all its creatures, will never in the end suffer so cowardly, heartless and infamous a man as yourself to triumph.

HAWK. Indeed! Quick—open the trap, and descend with him to the cellars.

(At a sign from Hawkhurst several men rush upon Henry.
387 A desperate struggle. Henry calls aloud for help. They gag his mouth. The trap-door is forced open and Henry driven to the brink of the cellar beneath.)

NED. Hush!—his cries have aroused the police.

HEN. (Tearing off gag.) The police!—they come to my rescue. Help, help!

(They are forcing Henry down trap and forming a picture of consternation as act-drop falls.)

END OF ACT I.

Act II.

Scene I.—A Public Tea Garden, in the suburbs of London.—As the drop ascends, numerous parties are discovered seated in the alcoves, taking refreshments—Waiters continually pass to and fro.

(Enter Ankle Jack, extravagantly dressed.)

Jack. Well, I fancy I shall do; my togs being in keeping with this nobby place, I can pass for a regular swell, and nobody will twig the swindle. Mr. Fairleigh sups here tonight, I understand; so I must keep a sharp lookout, and not let him leave the gardens till I have made my communication. Bless me! who's this coming along? Some great man, I suppose, for the gardens don't appear large enough to hold him.

(Enter Ned Dawkins, attired in the extreme of modern fashion.)

Eh? Why, no—yes, but it is! What, Ned! is that really you?

Ned. Go away, my good man! Apply to the parish—I can't think of relieving beggars——

Jack. Good man? What do you mean? (Showing fight.) Perhaps I am a better man than you.

Ned. Fellow, when next you address a gentleman, eschew onions—you're positively obnoxious.

(Takes out smelling-bottle.)

388 Jack. Stand up. (Squaring.) I ain't going to be insulted in this manner.

Ned. Eh—what? It's Ankle Jack! A thousand pardons! I really didn't know you.

Jack. Well, I oughtn't to be surprised, then, for I hardly knew myself in this toggery.

Ned. I see an improvement in the financial position—lucky, like myself.

Jack. (Aside.) Lots of mopusses, no doubt. I'm devilish faint. I hope he'll ask me to take something. (Aloud.) Have you tea'd?

Ned. Not yet—I dined late. (Aside.) I had a *a* baked tater. (Aloud.) Well, suppose we tea together.

Jack. With pleasure, my dear boy. Ho, waiter! (He enters.) Tea for three.

Ned. There are only two of us.

Jack. I require a double quantity. Tea for three, and bread and butter for thirty-three.

Jack. Let's take a seat. (They seat themselves—Waiter brings tea—the waiter presents bill—Jack glances at bill.) Three shillings—very moderate.

Ned. (Looking at it.) I wonder how they can do it for the money.

Jack. (Casting it.) Quite correct.

Ned. (Ditto.) Right to a fraction.

Jack. Who's to pay?

Ned. Whichever you please.

Jack. Oh! in that case you may as well settle it.

NED. Not for Joseph! You asked me to tea. I appeal to the waiter; you ordered everything. In fact, I can't pay; I've no change.

JACK. And I hav'n't a rap.

WAITER. Oh, this is a bilk—here! police! police!

(A scuffle.—The police enter and secure Jack—Ned escapes.)

JACK. Really, gentlemen, this is all a mistake—I was not aware of the circumstance that I had forgotten my purse.

WAITER. Forgot his purse! ha! ha! ha!

JACK. No, I didn't forget my purse, here it is, I only forgot to put any money in it.

WAITER. Let him tell that tale to the magistrate—he's an old offender—take him off.

(As the police are dragging off Jack, they encounter Hawkhurst.)

JACK. Ah, here's a gentleman that will answer for my respectability, won't you?

HAWK. Absurd—I don't know you, fellow.

JACK. Well, then, I know you.

HAWK. I never saw the man before in all my life.

JACK. Oh, yes, you have.

HAWK. Indeed—where?

JACK. At the Apollo public house in the Borough.

HAWK. (Aside.) Ah, can he have witnessed the murder—I must ascertain the truth. (Aloud.) Waiter.

WAITER. Yes, sir.

HAWK. How much is this rascal's bill?

WAITER. Three shillings, without remembering the waiter.

HAWK. Let the bill be mine. (Waiter hesitates.) You hesitate—you doubt—doubt no longer—here is your money, and a shilling for yourself.

WAITER. (Altering his manner.) Oh, sir, a thousand pardons for my apparent rudeness—I saw you were a gentleman at the first glance—you could have paid at your convenience.

HAWK. Vamoose—scarper—fly!

(Waiter bows himself off—the rest disperse.)

HAWK. So you were going to betray me.

JACK. No—I never splits upon a pal.

HAWK. Depend upon it if you do, my vengeance will reach you, even to the extremity of the earth.

JACK. (Aside.) What a stretch of imagination.

(Going.)

HAWK. Stay, I cannot suffer you to depart till I am certain that I have nothing to fear from your tongue—you must give me some further account of yourself,—but I see Dognose approaching—I must speak with him. Till my leisure permits, you must stay in yonder pavilion.

JACK. I hope you won't keep me long, for I've an assassination with my young woman.

(The moment Jack goes into pavilion Hawkhurst fastens door.)

HAWK. Safe bind, safe find. Waiter, a bottle of cognac. (It is brought—then DOGNOSE enters.) Ah, old fellow, I want to speak to you—sit down—take a drop of brandy. (Dognose seats himself and eyes bottle vacantly.) Drink, man—tell me how you like it. (Fills a glass.)

DOG. Good—very good—nothing like brandy—it is light—comfort—life to me.

HAWK. Take another glass—you may need it, for I'm about to speak of Amy Willis.

DOG. Oh, name her not—the recollections of my wrongs rushes upon my brain and drives me mad—remind me not of the past, if you have mercy—alas! darkness is upon my days, and the shadow of desolation is flung over my soul.

HAWK. I speak not in sport of poor Amy, but that I knew her.

DOG. You knew her?—ha, ha! Was she not beautiful, spotless, good?

HAWK. She came from Jersey, did she not?

DOG. Yes, yes; you say you knew her?

HAWK. It was a sad day when her husband was arrested.

DOG. He was no felon! The accusation was false and I was condemned unjustly.

HAWK. (Aside.) My suspicions, then, are confirmed! (Aloud.) You are, then, no other than my fellow-workman, Robert Willis?

DOG. Yes, Amy called me so; but others call me Dognose, dog, and drunkard!

HAWK. But had you no friends to interest themselves in your behalf? An innocent man had surely some claim!

391 DOG. I was believed guilty, and guilt meets not with commiseration. For twenty-one years I was a convict, forced to herd with criminals of the worst class; but the misery I then endured was followed by a greater trial. On my return to England I found my wife dead—my child dishonored!

HAWK. Such affliction cannot be endured.

DOG. No; 'tis that which makes me drink and support life, that I may one day be avenged on the destroyer of my happiness!

HAWK. That day has arrived. I will impart to you a secret. You don't drink. (Fills. Dognose drinks.) I knew the murderer of your wife—it was not, as you suppose, a man, but a woman!

DOG. A woman!

HAWK. She was envious of her charms, and poisoned her!

DOG. Another glass of brandy. (Drinks.) Can you show me this woman? I will be calm; I will speak to her, and then——

HAWK. This very evening you may see her.

DOG. Where?

HAWK. Across the river. Some miles from this spot there is a brick-field, and on the left a lone house. At the hour of twelve the woman you would meet will be there.

DOG. How shall I know her? There may be others passing.

HAWK. She will pronounce the words, "I saw Amy Willis die!" (Dognose rises.) Where are you going?

HAWK. You may yet suffer for this meddling.

JACK. Sixty-sixth and last round. (Pointing to Hawkhurst.) The big 'un's floored, and Ankle Jack's as fresh as a daisy.

HEN. Yes, to you I owe my life, and while that life remains I shall not forget the obligation.

HAWK. There must be some mistake here. Frank Marchmont can answer for me.

JACK. Ain't he a cool 'un? If ever I set up an ice-cream shop, I'll have him for head freezer.

395 HEN. Frank, if you still retain a particle of honor, you will leave that man. Your past errors are forgiven. Let us hope that your future conduct will cause them to be forgotten. As an earnest of affection, I resign to you Louisa, whom I so well love.

FRANK. Henry, I do not deserve this. (Takes Henry's hand.) You are too generous.

HAWK. An affecting scene truly; highly agreeable to the parties concerned, and anything but pleasurable to those who have no interest in the family affairs. Shall I bolt or remain and face it out? I will remain—assurance elbows ability out of the apartments of common sense.

[Henry goes up to Hawkhurst. They regard each other.]

HEN. (To Hawkhurst.) Inhuman villain! the hour has now arrived when you and I must settle scores.

JACK. Yes, and I opine which will come off second best by long chalks.

HAWK. I am quite content. You will find I shall not hesitate to give you ample satisfaction. Name your friend, your time, and place.

HEN. Insolent! Do you suppose I would appeal to weapons? No law of honor compels a gentleman to exchange shots with a ruffian. When last we met, I registered a vow that I would denounce you. I kept my word, and the police are now in the house.

HAWK. I am fully aware of it; but I am not to be terrified, and it will be to your advantage not to molest me. In the first place, I never venture forth without being armed. In the second, I am provided against all contingencies by having your brother's bride in the custody of my confederates. Should I not return by a certain time, she may suffer more than if she remained under my protection.

HEN. You are in my power, and your threats shall not
396 save you from my resentment. Officers! (Calling to Police, who enter.) Do your duty!—secure that man!

[Hawkhurst wounds several of the police with a revolver, which he draws from his breast-coat pocket. After a desperate struggle, he escapes. The others follow in pursuit.]

SCENE III.—The Brick Fields at Battersea. Lone House, L. The River in the distance. Night and Moonlight. A railroad track runs at back from L. to R.

Enter DOGNOSE.

DOG. 'Tis near the hour—she will soon be here. I must not contemplate the scene; it is one of horror and darkness, such as to freeze the current of my blood. For myself, I might spare her; but Amy's soul denies pity. Hark! footsteps in the distance! They are those of a woman. Let me retire, My limbs, as if palsied, seems to refuse performance of their functions.

Enter LOUISA.

LOU. What could induce Frank to choose so lonely a place as this for the rendezvous. Doubtless he is compelled to do so to evade the snares and treachery that surround him. Oh, why did he not confide in me? Had he have acted honorably in the first instance, what misery might have been spared him. Ah! a stranger!

DOG. Start not, but answer. Are you the woman I am here to kill?

LOU. Kill? Mercy! Why do you utter such a terrible word?

DOG. What do you want in this deserted spot?

LOU. I am seeking some one, but it cannot be you. He desired me to be near the lone house, and this should be——

DOG. I ask again what you want, and why you approach yonder crazy tenement?

LOU. I expected to meet a person here.

DOG. Your token?

397 LOU. I was bid to pronounce a sentence.

DOG. Then speak the words.

LOU. "I saw Amy Willis die!" (Dognose raises his knife.) Ah, wretched man! what would you do? You surely would not take the life of one who never injured you?

DOG. Never injured! Ha, ha, ha! But I came not to bandy words. My object is revenge—dire and fearful! You think I am acting under the impulses of insanity, but my reason is as lucid as your own.

LOU. Stay, miserable man! your murd'rous hand awhile! There is some terrible mistake—you cannot believe that a poor lone girl can possibly be your enemy?

DOG. (Regards her.) Had it been any other than yourself, you would have been a dead woman ere this! But there is mildness in your eyes—innocence in your speech. I hesitate—I tremble—I freeze beneath your glance. Repeat your words.

LOU. "I saw Amy Willis die."

DOG. It is, then, true?

LOU. Yes; for Amy Willis died in these arms—she was my mother. (Dognose lets the knife fall, and stands transfixed.) Oh, why do you gaze on me thus wildly? A shadow is thrown over my heart, and a blight over my young and ardent spirit! (Dognose caresses her.) Oh, why do you press me to your bosom, and grasp

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my hand so earnestly—you, who would but in the past moment have been my murderer?

DOG. My tongue cleaves to my mouth—I can hardly speak! Emotion—happiness—joy stifle me! Learn, girl, that your mother was my wife!

LOU. Great God! then you are——

DOG. Thy father! (Louisa rushes into his arms.)

LOU. My father—my father!

DOG. 'Tis the first time that thou hast ever addressed me by that endearing word, for thy infant's lips had not learnt to lisp it when I was cruelly torn from my home. (Embraces her.) This
398 happy hour repays the years of misery and suffering I have endured!

LOU. From this time, dear father, we will never part.

DOG. Never—never! I cannot afford to give up my newly-found treasure! (Embraces her again.) We will often speak of thy mother, who rests in Heaven!

LOU. Yes; for she was kind and good. She often bade me cherish my father, and with her dying breath blessed him.

DOG. Poor Amy! she knew that I was innocent.

LOU. Yes; and for that reason a monster sought her life. He murdered her because she held proofs of his own guilt.

DOG. Proofs say you——

LOU. Yes, she by a fortuitous circumstance discovered the culprit and his real name.

DOG. What was it?

LOU. Bernard Jackson. After poor mother's death he made away with the evidence against him, and the stigma of the robbery with which you were unjustly accused, still attaches itself to your name.

DOG. The villain!—but the day of retribution is at hand. I have now the means of vengeance, and will use them. Come, girl, you've seen a father's downfall, be now the witness of his exaltation. Conceal yourself in yonder habitation while I circumvent our deadly enemy.

[Music.—Louisa enters the Lone House L., the interior of which is visible to the audience. Dognose locks the door—holds up the key, and then places it in his pocket.]

Enter HAWKHURST and SHABNER.

HAWK. Well, Dognose, have you been successful?

DOG. (Abstractedly.) I will do it—so good an opportunity may never occur again.

HAWK. You do not answer me.

399 SHAB. He seems in one of his moody fits—he has been drinking, no doubt—let me question him. Mr. Hawkhurst wishes to know whether you have been as good as your word with respect to the girl Louisa.

HAWK. Is your work complete?

DOG. No—for you yet live, villain.

[Rushes upon Hawkhurst. Hawkhurst with the assistance of Shabner is enabled to wound Dognose—he falls senseless, and is left on the iron track of the railway by the assassins.]

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Court Wig.....	15	0	Bridal Boquet Bloom...	3	6	Hares' Feet.....	0	3
Clown's Wigs.....	9	6	Glycerine and Cucumber	1	0	Make up Boxes.1/9, 3/6 &	4	6
Chinese Scalp.....	9	6	Bloom of Roses	1	0	Prepared Chalk..per lb.	0	4
Nigger Wigs, plain.....	1	6	Cox's Curling Fluid....	3	6	Rouge.....	0	6
„ Brutus....	2	0	Blanc de Perte Liquid ..	0	6	Spirit Gum..3d., 6d., and	1	6
„ Spring....	3	6	„ in boxes.	0	6	Vaseline.....per lb.	1	4
Beards and Moustaches.	2	0				Cocoo Butter.....	1	0
Whiskers, per pair.....	1	6				Giant Powder Puffs.6d. &	1	0
Moustaches....1s. 6d. &	1	9						
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HAWK. I think I've settled him—if not the coming engine will complete the work. Now, then, to secure the girl—she can't be far off.

[Exit, followed by Shabner.]

LOU. (In the house.) All seems quiet, and yet just now fancy pictured to my mind a struggle of contending men. I hope my father will soon return—I was very wrong to suffer him to depart alone. (Goes to iron grating which forms the door.) From this spot I can witness his approach. Ah, what is that! My eyes surely cannot deceive—there is some object lying across the iron road before me—it can never be a human being in such a dangerous position. I must warn them. Ah, the gate is locked—how unfortunate. The train will be down in ten minutes—if the poor creature is not sleeping, my voice may be heard.

DOG. (Feebly.) Who's that?

LOU. Heavens! 'tis my father.

DOG. Listen to me, and restrain your grief, for I have only five minutes to live.

LOU. (Shaking gate.) Oh, and I cannot aid him!

DOG. Never mind, you can avenge me. Hawkhurst is a——

LOU. (In agony.) Oh, I must get out.

[Shakes gate again.]

DOG. Can't you force out a bar—I am too weak to move.

LOU. Lock and bars alike defy me.

DOG. Is there nothing in there?—no hammer, no crowbar?

LOU. Nothing. (She searches the apartment: Faint steam whistle in the distance.) Great God!—the train! (Paralyzed a moment—resumes her search—shrieks as she discovers an ax.) Heaven has not deserted me—courage—(Strikes gate)—courage! (The steam whistle is heard again nearer, and rumble of train on the track.) It must give.

(Noise of train increases. A last blow—gate flies open and Louisa rushes to Dognose. Just as his head is removed from the track, the train passes with a roar and a whistle.)

(Enter HENRY and the whole of the characters except Hawkhurst.)

HEN. Providence be praised, you are saved, and restored to happiness. Frank, accept from my hand your wife—Louisa!

DOG. The villain, Hawkhurst—where is he?

HEN. He is now a prisoner of the law. As Bernard Jackson, your old enemy, let the law punish him. Your existence hitherto has been a long night—but there is a morning—let us hope that it will bring sunlight, genial gales, and comfort to your future days, while it banishes the remembrance of those scenes which have been enacted in London at Night.

CURTAIN.

(Here follow "advertisements" marked p. 401.)

402 DEFENDANTS' EXHIBIT "THE LAST DOLLAR."

U. S. Circuit Court.

AUGUSTIN DALY
v.
GEORGE P. WEBSTER *et al.*

DEFENDANTS' EXHIBIT "THE LAST DOLLAR."

ACT III.

SCENE 1ST.—The abode of Walter Grant. Supposed to be at the top of a large building. The tower of the churches seen through the window. Charts of astronomy—hieroglyphics, &c., in various positions.

Furniture outre, but modern style, with a degree of elegance.

Discovered.—Grant discovered at a table engaged with celestial robes. An attendant ushers in Mr. Champford. Grant does not notice them.

CHAMP.

(R.) Sure, I have made some mistake—is this the doctor?

(The attendant signifies by a nod that it is he.)

GRANT.

(L. H.) (Rises.) The calculation is correct. Ah, a visitor. Mr. Champford, I am glad to see you, sit down. Martin, close the door; muffle the bell. I see no company until this gentleman has departed. Martin is not an inappropriate name for the attendant of an astrologer.

(He motions Martin to depart. He does so.)

403 CHAMP.

With your profession of astrology—or its practice, I have nothing to do. You know whom I seek. No other motive would induce me to visit an apartment occupied as this seems to be.

GRANT.

You are one of the few wise ones of the world and would doubt the wonders of this age of progress.

CHAMP.

I deal in realities, sir.

GRANT.

Are all your doings realities? Do you never wear a mask—do you in open day permit the test of truth to be applied to all your actions.

CHAMP.

I have no dealings with imposters.

GRANT.

Your planet may be Mercury. The astrologer might name you a thief. If you are an honest man, the astrologer's words against are as the air, disturbed by zephyrs—opposed by gravity. Mr. Champford, you are esteem'd rich—what men term a money king—the most despotic of tyrants—are the monarchs of wealth.

CHAMP.

Men do account me wealthy.

GRANT.

You are a bold operator in stocks.

CHAMP.

Finance and its subjects are part of my vocation.

GRANT.

You have the stewardship of others' funds.

CHAMP.

Often I do.

GRANT.

Do bankers when receiving gold ask other questions than those of weight and purity of coin? You are a banker. I may wish to open an account with you. If my small gains are gathered from the follies of men, would you refuse them as security against my bill drawn as I may need——

404 CHAMP.

No, we cannot question every dollar as it passes through our hands—how the holder gained it.

GRANT.

No indeed—if none but honestly-gained coin would pass through, the circulating medium would fast decrease.

(Ready, small clock to strike.)

CHAMP.

This does not interest me.

GRANT.

Well, then, to my story. You cannot recognize me—me, Walter. Most twenty years ago, a young man just married intrusted to the keeping of a friend a part of an estate in trust for his wife and child. He had squandered his own patrimony and the "last dollar" had passed from him with no other fault than a spendthrift's name (acts) involves, for a few dollars in hand. The deed of trust was cancelled and passed to sell from one friend to another friend. This, too, melted away in the atmosphere of temptation, infectious with gaming and wine—and with it part of his birthright and honest name.

CHAMP.

I tell you again these reminiscences of parties unknown to me—

I cannot entertain. I have business here, and if the person who made the appointment does not intend to keep it, I may retire.

GRANT.

Five minutes have not elapsed. When the clock strikes he will be here. We are to have dealings together, and it is necessary that we understand each other. Although I am rich, I passed many years in a prison—not at hard labor, but condemned to idleness, the body and mind both. I studied there—I thought—there, I first conceived my science of astrology. And the stars at last aided in my escape.

CHAMP.

You now are wealthy, then?

GRANT.

I am.

405 CHAMP.

May I ask, without obtrusive curiosity, for what you were in prison?

GRANT.

You may, and I will answer you, unless the striking clock prevents me. For then your friend Grant and you will be engaged together, and the Astrologer must leave the room. I told you I had lost my character, had spent the last dollar of my wife's jointure, when the friend I told you of, who had thus far aided me, replied to a request for a loan—that I had not had any security. But if I would take a loan in counterfeit coin—or in bills of the Bank of United States, they are at my disposal—I declined their kindness—in despair I returned to my desolate home—that night, I was arrested, charged with coining—arrested—condemned and sent to prison. Some one had robbed the money of the United States and placed in its stead, bad coin like to that found in my house—and you may remember the circumstances. Mr. Champford, try your memory—try it?

CHAMP.

Your case in part is like one—that I do remember, it has its differences—important ones. May I know you?

GRANT.

Yes. Look at me? Will not your eyes inform you—or are your victims so many?

CHAMP.

I do not recognize you.

GRANT.

Indeed.

(The small clock strikes.) (He removes his beard, whiskers, and cap, throws off his robe.)

Do you know me, now, Morrill Champford?

CHAMP.

Walter Grant.

GRANT.

None other. Am I not rich—have you not unjustly gained
406 money of mine, kept in hand for twenty years? I will draw
a part of it at sight. You must have drafts. For you I have suffered—pay me for loss of reputation, for twenty years of manhood, life——

CHAMP.

Though innocent of that you charge me with, I am disposed to be your friend, as I ever was.

GRANT.

Pay me not in words. Return all you have robbed me of or I will place you in the prison from which I have escaped.

CHAMP.

Do you not fear detection?

GRANT.

No. I can establish now my innocence. Prejudice sat in judgment at my trial—circumstances and perjury wove such webs, that any jury could not penetrate the truth, and the severest punishment of the law was pronounced me, because I once had been rich—but now that truth will appear.

CHAMP.

How have you evaded the police. There has been a reward offered for your capture.

GRANT.

A small one—too small; a larger reward would have given me trouble. I have been among the police; they visit me here, but they do not know the astrologer is Walter Grant.

CHAMP.

You suffered from circumstances. Had I suffered with you that would not have lessened your burden. Self-preservation is the first law of nature. I was guided by that law.

GRANT.

So shall I be guided. You was guilty—I was not. I am a broken, ruined man now. I ask but peaceful obscurity for the rest of my life. But the innocent offspring of my blood must be preserved
from the stain you have placed upon my name—the judg-
407 ment of the court at this late day must be reversed. My
rights and privileges restored, my innocence made clear—and you must do all this.

CHAMP.

I will take legal counsel in your behalf, and if possible——

GRANT.

Possible?

CHAMP.

Well, I shall serve you to the best of my ability. My inclinations lead me to do so.

GRANT.

I am not to be put aside. I have been here long enough to hear of your great wealth. Often during my confinement I have sought, through friends, the Executive clemency in my behalf—always in vain. But now I have documentary evidence. Now I know my appeal will not be made in vain. I have a friend to aid me, and you must do your part.

CHAMP.

May I ask that friend's name.

GRANT.

Rambouiller—in his hands is a sealed package.
Depositions—you know their value.

CHAMP.

They must be mine, or I——

GRANT.

Stay you here awhile. (Grant Exit L.)

CHAMP.

Still am I goaded on to speedy ruin. Shall I pause or go on. Money. Where shall I get money to refund unless I kill or rob? * * * How if I murder Grant? * * * The papers are in other hands.

GRANT.

(Enters L. H.) There! Mr. Champford, read that and sign it. A day and a night I will be quiet—you can consider it.

(Champ. receives the paper, glances at it and in agitation.)

408 CHAMP.

Does Rambouiller know the contents of the package.

GRANT.

He does not. Comply with that document's provisions, he shall not—you may think the conditions hard. I am the judge—the jury—all. From that there is no appeal, except to the law—with evidence.

CHAMP.

Keep from the police—I will read this.

GRANT.

Do, do—my hours for the crowd are from 9 to 11. You will be always welcome. I will detain you no longer.

CHAMP.

What certainty have I that you will keep faith with me?

GRANT.

None. If you judge me by yourself, act honestly with me, and in consideration of your age, and that you have a child I will forgive the past.

CHAMP.

I should have at least your pledge of honor.

GRANT.

At least? That is the most sacred pledge a man can give. Honor should be pledged to honor. Mine is untarnished, yours is among the things that were.

CHAMP.

Must I submit to such indignity.

GRANT.

You must. I shall consider you still as my banker—and perhaps draw checks if I need.

CHAMP.

I am weak with rage and must conceal it. You shall hear from me soon.

GRANT.

See that I do. Let me show you down.

(Politely he shows him out; and follows R. H.)

CLEAR STAGE.

409 ACT III.

SCENE 2D—Rambouiller's.

(L. H. Horatio enters with Peletiah.)

HORATIO.

So, young man, you can give me no information on the subject?

PEL.

Well, I can't give you no more than I have—there's Bridget, she cleans candlesticks and dinner pots—shines up the knives—does some of the washing and the likes of that—there's Priscilla, she makes beds—dusts the furniture—irons up the dickeys and the women's things, and sometimes goes to the door, and then there's Miss Bidaway, she's kind of friend to the old lady, and I, open and shut up shop and such like.

HORATIO.

Well, contrive to get this note to Miss Bidaway, will you? I think I'll try her, and you needn't say who gave it to you.

PEL.

Well, there is no harm in that.

HORATIO.

I can trust you?

PEL.

Yes, when I talk 'pon honor in matters of trade a feller eyes his chap—I might yankee a little—if a fellow was green, but I wouldn't cheat for a livin' more than you would, Squire. Don't you want something now to make your hair grow?

HORATIO.

No, sir; but if you deliver that note, and I find you adroit, I'll give you the price of your time.

PEL.

Well, Squire, there's no doubt about my doing it.

(Mrs. Rambouiller enters R. H.)

MRS. R.

Why, Mr. Champford, have you been waiting for me?

410 HORATIO.

I have, but it is a pleasure to wait for a lady of Mrs. Rambouiller's taste and judgment.

(Peletiah has gone up stage engaged figuring and counting money.)

Say, Mrs. Rambouiller, why is it your daughter still refuses my friendship?

MRS. RAMBOUILLER.

Ah, Mr. Champford, it is her lack of taste I declare—it is singular—you know I am only a stepmother, and she makes such strange remarks.

(Peletiah comes down L.)

Mr. Patch, I am going to send home a load of furniture. I wish you to see that it is handled carefully.

HORATIO.

If you are walking out Mrs. Rambouiller, I shall be happy to show you something elegant in the way of a dining table, if it suits your taste, I shall be happy to have you accept it from me.

MRS. R.

Well, I declare, sir, you are kind—this is one step in gentility—the elegant Mr. Champford for a beau.

HORATIO.

I shall be delighted—she shall tell me where the old man's stray box is. Patch didn't forget the business.

(He with extreme politeness offers her his arm.)

MRS. R.

I hope the Flaestrings are out to see this. Oh, what a little fool Louise is to lose such a chance.

(They exit with expressions of satisfaction L. H.)

PEL.

Well, this letter is for Miss Bidaway—she's a curious old gal. Women folks up our way calls 'em old maids—say she hates men critters like pizen—always talking about 'em too. I heard her tell Kittery the other night she might have been married twenty
411 times over only she wouldn't do it—Kittery gal don't like her and she don't like Kittery gal—gals is up to strange doin's—

they won't let me blow fife never on 'em in the house. I good mind to try—old lady is gone out—old man too.

(Pel. takes the fife from his trousers leg—Priscilla enters R.)

PEL.

Kittery gal's come—I must put up my music.

PRIS.

I have been calling for you for half an hour.

PEL.

What did you want on me?

PRIS.

Did Missus tell you about the furniture?

PEL.

Yes, I've got the orders. Say, where's Miss there—the one that's death on auctions?

PRIS.

I don't know.

PEL.

Say, don't you want to trade for something? I bought a lot of needles, hooks and eyes, and garters—with printing on 'em soft as velvet—silver buckles to garter 'em on, and poetry round the straps printed in gold letters—here's a sample, "Evil to him who evil thinks."

PRIS.

No, sir; neither the needles or garters—you are a cheat. Look at the new gown I bought of you last week, just caught in a little shower and the blue flowers have all run into the yellow sprigs. I'll have my money back Patch, you warranted it to wash.

PEL.

Well, did you wash it?

PRIS.

No; I did not.

PEL.

Well, it ain't my fault. The feller I bought it of warranted it to wear. Said if it didn't he'd take it back. It's one of them
412 changeable I suppose. Wash really. You couldn't expect much of fourpence a yard. You'd ought to had an umbrelly. I got one I'll sell you cheap.

(Miss Bidaway enters and observes them L. H.)

PRIS.

No, sir; I don't want any more of your auction bargains. This nice Miss Bidaway stuffs you up with cheap notions——

MISS BID.

(Miss Bidaway comes down.)

Ah, you're here are you? You step in mighty softly—listening. Well, listeners don't hear any good of themselves.

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MISS BID.

(Miss Bidaway comes down.)

Ah, you're here are you? You step in mighty softly—listening. Well, listeners don't hear any good of themselves.

MISS BIDAWAY.

Young woman, your mistress requested me to remind you that she wished you to assist Bridget in the washing.

PRIS.

Mistress! I haven't got any mistress, I thank you. A mischief-making old slot, watching me all the time. I'll be up with her. Peletiah, you had better look out.

(Exit flaunting R. H.)

MISS BID.

It is surprising that folks in this world don't know their places. What's the matter with that impudent thing?

PEL.

Kittery gal—Priscilla. Oh, she's shaky about her new gown, that I traded off for you to her. Don't wash, she says.

MISS BID.

Oh, that's it. Everybody should be their own judge of dry goods. Mr. Patch and Peletiah, I wish to ask a favor of you?

PEL.

Ask it out, ma'am.

MISS BID.

It's rather delicate to ask you, but I wish to visit a cousin
413 of mine this evening, and I am afraid to go home. Will you go with me and see me safe home? I don't like to ask some gentlemen; I suppose you know why?

PEL.

Well, no I don't, unless your kind of skittish that that they'll say no. However, I'm willin', if the old man don't want me for nothin'.

MISS BID.

I don't wish to underbid—that is, to undervalue you, Mr. Patch; you are young and good-natured.

PEL.

Yes, ma'am; and good-looking, too—at least, Kittery gal thinks so.

MISS BID.

I presume you are not old enough to have had any attachment for one of our sex?

PEL.

Attachment—that's genteel for havin' a gal. Well, I guess I won't stay at home for having a little joking with the boarding school gals up in our neighborhood. One of the schoolmarms used to board with father.

MISS BID.

Then if you have flirted with school misses I don't know but that I shall be afraid of you.

PEL.

Oh, you needn't be. I won't hurt you.

MISS BID.

Ah, Peletiah, you wouldn't be a bad looking fellow if you was to arrange your hair and cultivate that divine ornament of the human face, beard and whiskers.

PEL.

No, I can't go them things. I never saw a fellow yet with a large heap of brains that like to hide his face behind a pile of hair, a little sprig of whiskers round the back side of a fellow's cheeks, that, hollowed in some, sticks it out round like a cushion or a sofa, but when they go to hide their mouths so their teeth look like
414 the edge of a white dinner plate squeezed through a nib in a bear skin, I think they want to cheat the barber, or else their notion is to look like a nanny goat, and I always expect to hear them blart right out.

MISS BID.

Ah, you remind me of somebody. You look and speak so like him.

(She takes out handkerchief, cries and places her hand upon Pel's forehead. Pris. enters. Tableau.)

PRIS.

Well, if that's pretty doings. Miss Bidaway, Miss Louise wishes to see you, if you please. Good Godfrey, can I believe my eyes?

MISS BID.

(Coolly wipes her eyes.)

I will wait upon my young friend. There are moments we would forget; there are feelings we cannot conceal.

(She exit- crying R.)

PRIS.

(Going to Patch and turning him round.)

Patch, what was that creature doing with her hand on your head?

PATCH.

I don't know, feeling on it 'spose.

PRIS.

What did she say to you *to* Jezabel. (Aside.)

PATCH.

Said I'd be a good looking feller if I'd wear whiskers, said some feller somewhere reminded her of me—I spoke and looked just like him. One of our beaus, I s'pose. Then she cried a whole handkerchief full right out.

PRIS.

Patch, are you a fool?

PATCH.

Well, I never thought I was, if I had such an opinion of myself I'd snap it off sudden.

PRIS.

What else did this lady say to you. Anything about me?

415 PATCH.

No, she wanted me to go with her and see her cousin tonight.

PRIS.

And you said you would, of course?

PATCH.

Go. Yes, to be sure I did. I want to get acquainted, perhaps I can trade with him for something.

PRIS.

Well, either she or I goes out of this house—and you, Peletiah Patch, don't you see this artful old maid is setting a trap for you?

PATCH.

No, I don't. She never showed me none. What kind of a trap? What's the bait, Pris.?

PRIS.

I don't know what to think of you, whether you are most rogue or fool.

PATCH.

Well, I guess you'd better set me down—not either. My eye-teeth's cut and you don't get your petticoat thing round me anyway.

(Miss Bid. re-enters and observes.)

PRIS.

I'll keep an eye on the old parrot—she's no great things whoever she is—and you are going to see her cousin with her, are you? Ha, ha, ha, I'll tear her eyes out. I want to see you before you go—mind that. (Miss Bid. comes forward.)

MISS BID.

Mr. Patch, on your way to your store, will you do me the favor to put that letter in the post office for me; I give you some trouble, but I will crotchet a purse for you if I am where you are at Christmas. That odious pert miss has some designs on this young man. I must caution him.

(Patch takes the letter.)

PATCH.

Say, Miss, I'd een most forgot it—but I've got a letter for you.

(He follows Miss Bid. to give her the letter—Pris. pulls him back.)

416 PRIS.

Patch, I tell you I want to speak to you.

(Patch hands her the letter—she exits.)

PATCH.

Well, now Miss Pease, speak it out.

PRIS.

Let me see that letter. (She takes it from his hands.)

(Reads--holding the letter scornfully at a distance in the tip of her fingers.)

"Archibald Ben Lomanberg, Newport, R. I." Paid, paid! Why didn't she give you the money to pay it with?

PEL.

Well, I suppose she was in a hurry and forgot it, and wants me to pay it.

PRIS.

Well pay it, Patch. (She dropped the letter on the floor, wiping her fingers.) Ah, who knows what the creature had in her hands last?

PATCH.

(Picking up the letter smells of it.) Well, it smells nice—guess her hands had squash pie on 'em--or apple sorce, smells spicy as cinnamint or nutmeg.

PRIS.

Patch, don't you see what she's after; don't you see through her maneuvering—the old mummy?

PEL.

Well, I can't say as I see anything except that she wants me to carry this letter.

—

She wants you and every other man in the house—anybody could see it with half an eye.

PEL.

Me? What does she want to do with me?

PRIS.

She wants you for a husband.

PATCH.

For a husband--she can't have me. I ain't big and old enough to get married to a gal, and besides, if I was, trade ain't good enough for me to go to keeping house and providing for a family.

417 PRIS.

Well, I want you to keep out of her way, that's all.

PEL.

Well, Miss Pease, if the old gal wants to learn me a lesson in courtin' for nothin', I might as well take it, and it will save you time and trouble—guess it ain't, do you?

PRIS.

It is. I see how she tags you all over the house; she better keep clear of me.

PATCH.

Miss Pease, you are a little jealous—I suppose you don't want me nor nothin', do you?

PRIS.

I ain't talking about myself—if you want me, I shall expect to wait till you tell me so. (Miss B. re-enters L.)

MISS B.

I thought I dropped my gloves—young woman, did you notice it?

PERULIA.

No, I didn't see it, nor I don't want to see it, nor you neither. Is there anything about me you don't like—you seem to be watching me very close.

MISS B.

I don't know what you mean. You seem to be keeping this young man from this business. Mr. Patch, I've read the letter—I will attend to it. (This is spoken aside in a whisper to Pel. Pris. comes between them.)

PRIS.

I'll have none of your whispering here.

MISS B.

I will inform your mistress of your rudeness and impertinence to her friends—Patch, some other time. (Exit R.)

PRIS.

Some other time—ha, ha, ha, ha, ha, ha—go after her.
418 Patch—ha, ha, ha—she's old enough to be my grandmother—trying to wheedle a boy. Patch, some other time—what does that mean? Tell me, 1811? (Cries.) I'll—ha, ha, ha. (Gets into a rage.) I'd like to -ring her neck. (Exit L.)

PATCH.

Miss Pease's as high as nine. Guess I'll do without whiskers. Both on 'em's too much. Guess I'll let the physic work a little and go to sellin' cocoanuts. Nice and heedless gals are strange critters. Wonder how old they have to be before the pizen's out on 'em.

(Curtain.)

SCENE 3D.—Champford's House. Champford and Horatio enter.

CHAMP.

You have heard the truth and nothing else—my affairs are at the point of desperation—I used my last dollar to pay your forged acceptance and Ramb. is unpaid still—He will call for it this afternoon, and I have neither money nor excuse.

HORATIO.

Well, sir; you are the principal—I've got fifty dollars or so, but I must distribute that money among Bilkens Phlanger and his friends—then this man has a hold on you.

CHAMP.

Grant—yes as of iron—money here would purchase release—I find him more liberal in his views than I had any right to expect. I might as he requests certify to his innocence and not implicate myself, but how am I to reimburse to him twenty thousand dollars his just due with interest for twenty years.

HORATIO.

Well, that is a large sum—it will require that peculiar financial operation we spoke of the other day to relieve you.

CHAMP.

Part of it is accomplished—he will not take a dollar of the whole.

419 HORATIO.

Have you performed the necessary figuring to ascertain the amount of your indebtedness to him?

CHAMP.

I have not—he cannot be paid.

HORATIO.

Did it never occur to you that if he was dead his executors being ignorant of his claim, would not trouble you with demands for liquidation?

CHAMP.

All this has occurred to me.

HORATIO.

Of course it has—your sagacity is proverbial—well, then, why not decide upon it, men will die as suddenly in Boston as elsewhere—The coroner will settle the rest according to circumstances—I think I can find an agent who will suit you.

CHAMP.

His death alone affords me no safety; he has an attorney who, if he does not know, will soon know all secrets.

HORATIO.

That's awkward; he's a cunning fellow; had dealings with you, I suppose—whose the attorney.

CHAMP.

Peter Rambouiller.

HORATIO.

It would be a little too bad to kill him as he has been a friend of yours.

CHAMP.

Yes, I am under obligations to him; he will come soon for his money.

HORATIO.

You are unlucky; if you should decide to have him suddenly leave this world, it would be a good time, then take the principal afterwards.

CHAMP.

Horatio, I borrowed from the bank yesterday ten thousand dollars, part in gold—I have lodged it under the railroad bridge to the pier from east end on to where I stood yesterday.

420 HORATIO.

Capital—did it yourself, eh, wouldn't trust me.

CHAMP.

I was in extremity.

HORATIO.

You put it in a good place; 'twouldn't do to have it in the house here.

CHAMP.

Who could you get to beg for me in time to pay Rambouiller; with a boat you may succeed without suspicion.

HORATIO.

Well, I'll try for you—there will be a little over, won't there, for personal expenses?

CHAMP.

Yes, if I cannot persuade him to wait till tomorrow we will defer till tonight, and then I will secure it myself.

HORATIO.

But we were to have a party tonight, and the Lena, Sella, wife and daughter were wanted.

CHAMP.

It is not tonight. Go, Horatio, secure the money, and be careful you are not observed.

HORATIO.

Then to the pier.

CHAMP.

A short distance off is a string that is attached to a bow in which are bills and notes; be prudent.

HORATIO.

I will. sir. I've got the old man where he can't say "no" to me. I am a little afraid of an explosion, but there is no speculation without risk. The 10th pier. (Exit R.)

CHAMP. (Takes a paper.)

To the bank. I am a defaulter. $70,000—the last robbery is public, and I am not even suspected. A reward for the lost money diverts to either view of the police to the hearts of thieves. A victim must be found; another innocent. What ruin the dis-
421 posing of the last three years has brought upon me. How can I have the disposure detected involves? I cannot. Death is preferable, and as a cart death is in my hands.

RAMB. (Enters L. H.)

Ah, Mr. Champford, how you do? You are a very punctual man. You forgot to call on me. Did my young man de Patch make some mistake? He says you don't come——

CHAMP.

I did call, sir—you were out. My correspondent has not yet forwarded the money for your friend Roch.

RAMB.

Your correspondent is a good man, eh?

CHAMP.

Undoubtedly. As you see, I have assumed the debt. I consider it the same as a loan.

RAMB.

Very well. You will give it to me now, as I am obliged to go out of town on de business. I have not been at se business out of town for thirty years. I have never ride on se railroad in my life.

CHAMP.

Indeed, in answering the debt, I am entitled to the usual three days of grace, which does not expire till tomorrow. Still, to oblige you I will get it this evening.

RAMB.

I wish you would, for that leave nothing unsettled if somesing happen to me when I am gone. I have make my will; I owe nobody nothing, and the people what owe me and don't pay me—well, no matter.

CHAMP.

Do you go alone on your journey?

RAMB.

Yes, all alone. Paul take care of se house and Madame, and Patch take care of se shop and se lemon and se cocoanut.

CHAMP.

I understand that Grant has been released from prison. You remember him, don't you?

422 RAMB.

Yes, scandalous villiany it was to put him into se prison. I wish I knew who was at de bottom of se roguish business.

CHAMP.

Can we not aid him in some way?

RAMB.

I hope so.

CHAMP.

I presume you are friendly enough to receive in confidence any suggestion I may make in his behalf.

RAMB.

I am his friend.

CHAMP.

So am I. And a friend of his informed me that you had in your possession some documents referring to his case.

RAMB.

Yes, I have. He told me he shall see a man in se city to do him justice, and if he don't do it, I carry sese papers to de Chief of de Police.

CHAMP.

You have seen these papers?

RAMB.

Never. The seal is upon them and I don't break him. Paul has the package, and when I am gone he give them to the police—ah, it was pity for his child's sake that he should be ruin—did you know his little child?

CHAMP.

No.

RAMB.

No—By ze Tom cat it would have been funny if I let his son marry dat gal—oh hem. (Aside) Well, Mr. Champford, she is a good girl. I know her very well—good industrious girl and she don't know where is her father—no matter; somebody has cheat her like a great villain. I should be glad to see him put in ze prison what he deserve, should you, Mr. Champford?

423 CHAMP.

Yes, if it was proved against him.

RAMB.

Well, we were talking about ze money, Mr. Champford, what you say of that?

CHAMP.

Oh, I will accommodate you this evening. I could give you a check, but that you must wait till bank hours tomorrow.

RAMB.

No—I want ze money because I go away. If I was home I take ze check.

CHAMP.

My friend Clark of Charleston would lend it to me. He always keeps his money in his store—if you would like to walk with me, then I'll see. I should like to have a little talk with you about this matter of Grant's—you have the bill with you?

RAMB.

Yes, in my pocket book I carry him.

CHAMP.

If this person should be a friend of yours, a customer, you would not at this late day insist upon punishing him by imprisonment—I mean the man who it is supposed defrauded the child of Grant.

RAMB.

Yes, if he was my brother and I put him myself in ze pulpit of ze minister, and he rob ze child, I pull him out again as quick as I put him in wis my own hands, and let him go to ze prison of de rogue ze rest of his life.

CHAMP.

My chance is gone if discovered. Hell is tempting me now to do a murder, and why not—we are alone. How should I dispose of the body—no, not now—not here. (Aside.)

(Ramb. has been looking at his papers in the pocketbook.)

RAMB.

Well, Mr. Champford, what you say of de money?

424 CHAMP.

Will you ride to Charlestown with me. I may find him at the railroad office—he is a director there.

RAMB.

Well, I walk little ways with you. I hope zat chief of ze police look out for ze rogues—by ze tom cat zey grow in ze city. Since I first sell ze lemon and ze cocoanut, if you don't know who walk with you, perhaps you got one at your elbow, and you must look out of your pocketbook; eh, Mr. Champford?

CHAMP.

Crime is frequent among us—let us walk.

RAMB.

If you please—by joy and de tom cat I don't see Mommy Williams today. (Enter servant.)

SERVANT.

If you please, sir, the man has been here for you—yearly subscription for the funds of the mission to convert the heathen.

CHAMP.

Yes, ten dollars—there it is—take the receipt, Charles.

SERVANT.

Your pew tax for the quarter has been sent in.

CHAMP.

Yes—see the man paid, his time is money—do not give him the trouble of calling again.

(Gives him money—Servant exits R.)

I am sorry to detain you, but I like to see these little matters attended to. (X. L.) Could not have come in a better time. (Aside.)

RAMB.

Ah, you are a good Christian, Mr. Champford. By ze tom cat everybody must have somesing. I sall go with you; Madame will think ze old Harry have got me—no matter, de business before de old woman. (Exit L. H.)

(Lights down—whistle and change.)

(Curtain.)

425 ACT III.

SCENE 4TH.—Dark. Haverhill street and Causeway street, with view of front and side of Fitchburg depot. Lit up—night.

Discovered.—London Jim as a cabman entering L. R. H., with Phlanger and Belkins.

BELKINS.

You 'spose the thing is all right now.

PHLANGER.

To be sure it is—the train won't be in for half an hour yet. Where's the cab?

LONDON JIM.

Tother side of the building, on the narrow bridge.

PHLANGER.

And the boats—one fast at the draw, the other at the railroad draw. It's all right Bel.

BELKINS.

Hush—there's no names to be called by anybody.

LONDON JIM.

That's the way to do it. Where's the other chap that was to get the old man along?

BELKINS.

He will take care of his share. Who's at the switch?

PHLANGER.

That's my place. So you think old Bob Champford would give something to have this done, eh Belkins?

BELKINS.

Yes, he wouldn't do it. He is willing to pay. Paul Derby will have to stand in the gap, and serve him right too.

PHLANGER.

If the old man don't come how shall we do.

BELKINS.

Jim you go into the depot. See whose around, keep your eye bright, and remember that signal. Come round to me at the railroad bridge, look out for watchman and police, and if one of 'em interferes, give him a shot. You've got the Bob win't you?

426 JIM.

(Taking out a sling shot.)

That's the cook, I'll bet it is. I say Cully, ain't this a curious way to do up a job of this kind?

BELKINS.

No, I think it is first rate, will kill the old fellow and then lay him on the track, and strike him hard enough to quiet him, and let the engine do the next. When they find him they'll think he was killed by the train.

JIM.

That is a good dodge. Why you've got something in your knot anyhow.

BELKINS.

Hav'n't I? You see it is better to be a corporation than a man, ain't it? They never hang railroads for killing men. Say, Phlanger, see what that is over there with a lantern.

(Phlanger exit L.)

Tom's drunk now, he'll make some mistake with the body. Jim go look out for your cab, and come back and tell us how the land is.

LONDON JIM.

If all's right you'll hear my whip crack.

(Jim lights cigar and exit L. Belkins retires.)
(Horatio enters R. with a policeman, he is dressed as a policeman.)

HORATIO.

Just go up to the office, that's the orders, and hand in the report. I'm on the lookout here.

POLICE.

Well, if you say it's correct, I'll carry it.

HORATIO.

If it ain't, I'll make it all right tomorrow. No blame shall come to you.

(Policeman exit R.)

HORATIO.

Now, I think, I learned fast, all I want is the cash. I shan't wait the old man's motive. Let me see, I believe it was the tother pier, at any rate, I shall know the string. How devilish stupid
427 it was in the old man to conceal it there—he always moves to be so sure to win, that he goes too far. The idea of making myself a policeman ain't bad.

(Belkins appears L. H.)

Who's there?

BELKINS.

Ah, Squire, is it you?

HORATIO.

Belkins—good—got your revolver?

(Ring in orchestra.)

BELKINS.

Yes, sir; six balls in it.

HORATIO.

I hope we shan't have to use it. Come, let's see how things are. I wish this train was in, we might get through.

(They exit contrarily R.)

(Enter Champford L. H. in a cloak and Rambouiller, also in a cloak his underdress different from that worn in the other act.)

CHAMP.

You had better let me call a coach, it's rather late—near ten o'clock.

RAMBOUILLER.

No, sir; I s'all walk of myself. I am sorry that your friend is not at home.

CHAMP.

Well, sir, if you would wait until tomorrow for the money, you shall be sure to receive.

RAMB.

No, sir; tomorrow, at six in the morning, I go to my journey on some business what I must go for, for two or three days. You told me you pay me de money I borrowed for you from my friend, John Peter Rock, now de day is not gone till de twelve o'clock to night; if you pay me in two hours you save your credit and I am content. As your friend in Charleston is not at home to go somewhere else to get him to night, I like to help a him to keep his word. Where shall we go?

428 CHAMP.

Walk into the building and sit down a few moments. I will try my friend in Charlestown once more.

RAMB.

I shall go with you Mr. Champford.

(Phlanger enters L. H. Champford recognizes him.)

CHAMP.

My friend, will you take a note for me over to the Square in Charlestown?

PHLANGER.

Yes, sir.

CHAMP.

Mr. Rambouiller let us walk in. (Aside to Phlanger.) How shall I get at the money Phlanger?

(He points to Rambouiller.)

PHLANGER.

Yes, sir.

(As Champford and Rambouiller are going off L. H., Phlanger manages to pick the pocket of Rambouiller taking his pocket-book after they are gone off.)

That's my own speculation. I wonder if that is the old man that's to be run over by the engine. I wish it was that Paul Derby instead. I'd just as lief help kill a man as not when I got a little tight—but I'd sooner kill one I had a spite against. I'll just frame up and be ready—pocketbook I'll look into presently.

(Takes out a brandy flask, drinks.)

good, that flask puts me in mind of Jack Bangs, he fell off the engine one day, and after twenty cars went over him, there wasn't hardly enough left of him to swear by. Nobody ever knew I pushed him off, though, I had to do it in self-defense. He'd a blowed on me when he got home of something that would have been Charleston business for me. I had to drink up to it then, and I must now.

(Drinks often.)

Ha, London Jim is the boy, and here is a good one, that
429 even I should be in with a band of burglars—well, if I am hung rum did it.

(London Jim enters L.)

Hello, Jim, is that you again?

LONDON JIM.

It's nobody else. Why, Tom, you're drunk.

PHLANGER.

Yes, what do you think of robbery for a living?

L. JIM.

Well, I think it's like all other business, as things go nowadays, the practical success of robbery depends on capital and available funds. Now, I don't enter into any speculation without a long purse in the concern.

PHLANGER.

I can't say as I understand you.

L. JIM.

You see, I go science against strength. If I'm in jail, they have me. Business stops, without my partner is working for me, there's lawyers to pay, witnesses to hire, and all them contingencies. Money's the thing.

PHLANGER.

And rum, money and rum—two tall fellows can do everything. I've got plenty of one, and but little of the other.

L. JIM.

That's a bad mixture. I'd rather it should be the other way.

PHLANGER.

Jim, I want to ask you a plump question between ourselves.

L. JIM.

Put it to me. I am good for an answer.

PHLANGER.

Did you ever kill a man?

L. JIM.

Can't say I ever did. I say, Tom, it goes against me trying to trap a nice fellow like Paul Derby.

PHLANGER.

It don't against me; I should have been Ben Belkins' second engineer but for him.

L. JIM.

Do you think Paul did rob the bank?

430 PHLANGER.

Why yes, if Mr. Champford thinks so, I do.

L. JIM.

Well, I must look out for my fore. Good luck to you, Tom.

(Exit L.)

PHLANGER.

Luck! yes, I warrant you. All right. Now to my post. Steady, old fellow, steady.

(Exit L. H.) MUSIC. (Pause before whistle.)

(At change Phlanger may enter L. on the stage; that is on the main railroad.)

PHLANGER.

Now I'm alone. Let me see if I understand what I'm about, and let's see about the old man's pocketbook. (Opens.) Eh, dark! Can't tell money from shop bills. Where's the lamps? Out. No matter. I can make one.

(Takes matches, lights one, then lights a piece of paper; examines the pocketbook.)

Yes, money and papers. I'll be honest to-morrow, take out the money and restore the valuable papers, which are of no use to anybody but the owner. He is a rich man. I'll take the money and give him the valuables. That's a fair division. (Drinks.) Here's luck. So the long and short of it is that the old Frenchman is to be put under the train and die an accidental death. He being a gentleman—if it was me they'd say, "Rum did it"—where is the turn out? (Looks around.) Eh, I am on the wrong road. How the devil did I make this mistake—that Jim went the right way and I the wrong? Ha, ha, ha! Well, somebody must pay well for this kind of work. It's risky. Belkins says they will. He knows. On the wrong road! "Rum did it," &c.

(Exit L.)

ACT III.

SCENE 5TH.—Wing lights out.

A section of Fitchburg Railroad with the depot part of the section practical, so that a train may run into the building, the engine and tender first detaching.

431 In the foreground is the water between the Maine and Fitchburg roads. A lumber vessel seen at the wharf between a part of it—the pier of the bridge open so that a boat may pass through. Beyond the bridge is seen narrow bridge in part practical, with masts of vessels and church towers in the distance.

Night; lamps lit upon the bridge and depot, and upon the engine and trains; a cab and horse seen on narrow bridge.

MUSIC.

Phlanger is seen walking over the railroad bridge—after him Belkins. A boat drifts on R. H. 3 E., in which is Pel. He comes under the bridge. A man on the deck of the vessel is smoking.

PEL.

Well, I should like to know where I've got to, such a lot of bridges, and I've lost my way—dark as Satan. I shan't get home in time to see Miss Bidoway come in, I reckon. I keep going about and can't do nothing nohow. If anybody catches me on the river sailing again, guess they'll know it. I daren't hollow forth. I good mind to blow my fife, but it's so dark I can't see the holes.

MUSIC.

A distant engine whistle and bell heard. (L. H. centre.) He gets alongside of the lumber vessel. Champford and Rambouiller are seen crossing the bridge, coming from the entrance on narrow bridge. At the same time another boat, in which is Horatio, is seen under the pier of Fitchburg bridge with a lantern. He is examining the piers.

MAN IN VESSEL.

Boat ahoy!

PEL.

Do you mean me?

MAN.

Aye, aye, what are you about?

PEL.

Well, I am about tired out. Can I get harbor if I get into your vessel, you?

432

MAN.

Yes.

PEL.

(R. H. 4 E.) How many of you is there aboard?

MAN.

Nobody but me. Captain and all hands have gone to the museum.

PEL.

Well, catch the rope.

(He throws the rope, man catches it, Pel. holds on.)

MAN.

Let go your painter.

PEL.

I ain't got any painter, you.

MAN.

The rope.

PEL.

Oh you, how dye do! (Gets on board.) Got any cigars?

MAN.

No.

PEL.

Well, I'll sell you some; this darn scrape comes from trying to follow Paul Derby. (Aside.) Say, can I sell you a razor or a bottle of pain killer? Always carry a pocket full of notions to peddle. Hold a light, you.

(They are engaged with a light looking at articles.)

MAN.

Is that man under the bridge one of your party?

PEL.

No; let's ask him on board.

MAN.

He's fishing. Let's see your razor.

(Horatio works his boat out R. H. E. close to bridge; upon the bridge a man is seen, dressed in coarse, loose jacket and
433 trousers, like a workman. London Jim comes on the bridge and talks to him. Pel. and man go below in vessel. Horatio works back off R. H. 3 E.)

JIM.

The old man says he's willing to go home, sir, and he's made a bargain with me to call for him tomorrow morning to go on an early train.

CHAMP.

Well——

JIM.

I'll drive him a little off and then drive him back again. I know the time of the train; I can hear the whistle three miles off—of Pates, crossing nearly in the night.

CHAMP.

Did he work for Mr. Champford?

JIM.

Yes; I told him you had gone for some money, He took the number of my cab, sir. What's the use of a dead man's knowing the number of a cab?

CHAMP.

Go! If I could but get the money! How tedious the time passes! The coast seems clear.

(Horatio, in the boat, comes on again R. H. 3 E.)

Ah! there's more delays.

(Horatio, in the boat, works off the bridge centre, and stern on. The cab, if practicable, seen to go off; if not, Champford speaks of it.)

There goes a carriage. The cabman is gone.

Let the worst come: I am prepared for all. The police are on the lookout for Paul for the robbery. If I could but get the gold!

(Horatio is seen working at the pier under the bridge.)

HORATIO.

Where the devil is the package—hark! Am I watched? Nonsense, no. Any man has a right to the navigation of the river, night and day. Hello! who is that on the bridge?

434 CHAMP.

Who are you?

HORATIO.

A peaceable citizen, who are you?

CHAMP.

Have you seen the cab?

HORATIO.

Why, that's the word, you are one of our party.

CHAMP.

Horatio, is that you?

HORATIO.

Yes.

CHAMP.

Draw alongside.

(Distant whistle of the train is heard, he draws the boat up to the pier. Champford descends into it, they both make under the bridge. Paul is seen upon the railroad bridge Stern on.)

Music P.

(Ready large clock to strike 10.)

PAUL.

The old man was in the depot—one of the men knows him well—saw him get into cab. What can he be doing here at this time of the night?

(A man runs up to Paul.)

What train do you expect?

MAN.

A special train with a small party.

(Man exit.) (Belkins enters.)

BELKINS.

Hello, Paul Derby, what do you want here, after the way I befriended you to cheat me out of my chance. If it wasn't for getting myself into difficulty, I'd throw you into the dock.

PAUL.

I don't fear your threats, but as I am not anxious to disturb the peace, I shall leave you.

(Paul goes off L. H.) (Champford and Horatio come partly out and speak to Belkins in a whisper.)

435 BELKINS.

I see the trick, it is first rate.

HORATIO.

You take the gold, father, and lead the line to the package of bills up to the bridge. Is there anybody on board of that schooner?

CHAMP.

I have heard no one.

Music P.

(A line is lead up to the bridge, and tied to the rail; Horatio climbs up with a bag of gold, Morrill Champford in the boat. The whistle and bell is heard near R. H. 3 E. Champford paddles his boat away from the railroad bridge—and is out of sight.)

(Pel. on the deck of the schooner is talking to the man on board.)

PEL.

Well, friend, I guess I'll get back with the boat round the bridge—you'll find you've got a good trade out on me.

(Large clock strikes ten.)

Hello, ten o'clock—the old man will think I'm lost—good night, I say, I got a light now.

Music P. P. P.

(Speak through music. He gets into the boat, pushes under the bridge C. well in.)

(Paul and Horatio re-enters.)

HORATIO.

I heard the man say so, Paul, we can soon tell. Yes, there is the line—stay here and watch till after the train comes in, then save up and the reward is ours if the story's true.

PAUL.

If you do see the old man, tell him I'm waiting for him.

(The whistle is now heard loudly and the bell. Champ. boat—walks on.)

PEL.

There's some roguery gone—I'll lay close a little and try to find out.

436 PAUL.

Why should I wait, I am in no dishonest way. I'll know the truth at once.

Music F. F.

(Train x's. Champford cautiously makes his boat towards the bridge and is anxiously watching the line. The engine runs in, then the train—a man speaks—pause.)

MAN.

There's a man on the track, the whole train has gone over him.

Music.

(The different actions are simultaneous. Paul pulling up the rope is seized by police officer, he lets go the rope and the package and rope falls into the boat in which is Champford, Peletiah; Champford shoots his forward to catch it, in doing so falls overboard, is seized by Peletiah and taken into his boat, which getting near the schooner Champford jumps on board and escapes—package with Peletiah—Belkins, London Jim and others are seen upon the bridge.)

PAUL.

I declare, where are the police.

PEL.

What does this mean?

HORATIO.

Who is the man that's killed?

BELKINS.

Can't tell, he's so mangled.

(A figure of a man upon a board is brought on the shoulders of some men. The engine backs off over the bridge, bell ringing and whistling. The man comes to the deck of the schooner. Peletiah works his boat to the bridge and is in the act of climbing up when the drop falls on the picture.)

PICTURE.

(Perhaps it might add to the effect to have a military band playing in the cars some spirited march, the party being supposed to be a military company.)

(Here follows diagram marked p. 437.)

438 ACT IV.

SCENE 1ST.—Champford's Apartment.

(Discovered.)

CHAMP.

(L.) Are you sure they're gone?

HORATIO.

(R.) Belkins and the one they call London Jim have gone to California. He has not been seen since that night. The papers have a notice of the accident, though the body of the murdered man has not been recognized, and I understand the mutilation is dreadful.

CHAMP.

No doubt it is Rambouiller, else I should have heard from Grant. How did Paul get released?

437

HORATIO.

He was bailed by Rock. The evidence of his connection in the robbery was too light; he must find more.

CHAMP.

Did they not find the key of the vault in his possession?

HORATIO.

No, they searched for it, but somehow he had got rid of it.

CHAMP.

We must find it. Paul must be connected. Can't you find some one who will swear he was with Paul in the business? He shall be well paid and his safety made sure.

HORATIO.

I am willing to try.

(Three policemen enter ushered in by a steward, who having pointed to Champford exits.)

POLICE.

Mr. Champford, are you still of the opinion that Mr. Derby contrived the robbery of the bank?

CHAMP.

I am, sir, and was surprised at the amount of bail fixed by the magistrate.

439 POLICE.

This is Mr. Horatio Champford?

HORATIO.

It is, sir.

POLICE.

Have you any acquaintance with this young man Derby?

HORATIO.

Yes, sir.

POLICE.

We have been informed that some of his fellow workmen saw him making a key of curious construction in the shop where he has been lately in some way employed. That looks suspicious.

HORATIO.

It does.

POLICE.

We are now going to arrest him on another charge, and if you are not engaged you may aid the course of justice by attending us to the house of the Rambouiller—we wish heaven to be discreet in our movements, as we have to deal with persons reputably connected, and as instructed not to proceed further in the matter except upon good ground.

CHAMP.

I will attend you.

POLICE.

Your son may also aid us, if he will oblige us with his company.

HORATIO.

It is not very convenient, sir, for me just at this time.

POLICE.

Our visit will be a short one, sir, it will really save you some trouble if you can oblige us.

HORATIO.

Very well! I don't like the company of police officers.

POLICE.

This is really an unpleasant business.

(He speaks apart to one of the Police.)

Search thoroughly after we are gone, there is your authority.

(Hands him document.)

You shall have assistance—shortly—(aside). Mr. Champford, there is a carriage at the door, whenever you are ready.

CHAMP.

I am ready. Horatio, keep your own counsel; in your anxiety to destroy this evidence do not forget yourself.

HORATIO.

Your caution is needless. That is a personage I never forget.

(Mr. Champford exit L. H.)
(Policemen cross behind to R. I. E.)

ACT IV.

SCENE LAST.—Discovered: Apartment in the house of Rambouiller, door in centre—a small room on the right, and one on the left.

Mrs. Rambouiller and Louisa entering R.

MRS. RAM.

Now, Louisa, it is just as I expected, turned out exactly so.

LOUISA.

I will not believe in his guilt, nor will I forsake him in his difficulties.

MRS. RAM.

Well, Louisa, you need not make any remark. I am only your stepmother, and in fact Mr. Rambouiller is not your father, so that I am not that—I don't know the relation I am to you, I believe I am none at all, but if you had only listened to the proposal of Mr. Horatio Champford, all this trouble would have been spared, and we should have escaped the disgrace of having a robber arrested in our house.

LOUISA.

Paul has convinced me of his innocence and you will pardon me if I insist upon silence on this subject in his presence and mine, until my father—that is, your husband returns.

441 MRS. RAM.

Very well. And now, Louisa, you will have no objection to attend Mr. Champford's great party.

LOUISA.

The same objections I ever had. I know it is Paul's wish that I should remain at home.

MRS. RAM.

Paul's wish, dear me—even Miss Bidaway says it always did astonish her that you should prefer Paul to Mr. Champford.

LOUISA.

If the woman had the smallest portion of the feeling of her sex, she would reserve her opinion for other cases, and not inflict injury upon those who have never done her wrong.

MRS. RAM.

Well, it is strange how hard it is for these girls to hear anything against their intended—now it is as clear to me as preaching and I know Mr. Champford is convinced of it.

(Miss Bidaway enters L. H.)

Well, my dear Bidaway, what does Patch say?

MISS BIDAWAY.

He says there are no letters, and Mr. Rock thinks it strange that he should go off so suddenly. It would be dreadful if anything happened to him—but isn't it terrible about Paul?

MRS. RAM.

I declare—I shan't dare to show my face in the streets without wearing a veil—everybody will point at me—I declare I really do miss the old man—if you hear any more news, come and tell me——

(Exit Mrs. Ram R.)

END OF SCENE LAST.

ACT IV.

SCENE 2D.

MISS BID.

I begin to think I have almost worn out my welcome here—Mr. Champford has no wife—I can't get in there—I ought to be
442 settled for life, and I am not sure that a young husband is not better than none for the present—and this country young man may serve my turn—I think I've set him a little against that forward thing he calls Miss Pease though I call myself 27—I really was thinking about my next birthday being my 40th.

(Peletiah enters L. H.)

PELETIAH.

Hullo—there's another—three gals right off I've run against. Try to get away from one and stumble on another.

MISS BID.

Mr. Patch—oh—the more I think of what you said the more I think how fortunate you are——

PELETIAH.

(Takes out an orange and with his knife is cutting it to look like a face.)

Well, Miss, what do you mean?

MISS BID.

You say you had determined never to get married.

PELETIAH.

Well, yes; I kind o' came to such a conclusion.

MISS BID.

I thought Miss Pease with her artful insinuations had wheedled herself so far on your good opinion that you might have proposed to her.

PELETIAH.

No, I ain't proposed—nor nothin' of the kind—she kind o' hinted a little that way but I didn't take it.

MISS BID.

That's right—she's too young for you. You ought to have somebody that can bring experience into the family.

PELETIAH.

Yes—I say—I don't think I shall go into any family speculation at present—did you ever get an answer to that letter I put into the post-office?

443 MISS BID.

Yes, that was a reply to an offer of marriage I declined in consequence of seeing you——

PELETIAH.

Well, then, I 'spose you forgot to pay me the five cents, but if it's answered that shows I did my part, so I'll take the five cents.

MISS BID.

Who ever heard of a gentleman asking a lady for money. I suppose that artful Pease put you up to it—there——

(Gives him money which he takes.)

PELETIAH.

Trade's trade—Miss—no friendship in trade—you know. Will you have an orange?

MISS BID.

No—I thank you—this is that young thing's doings. I wish she was to be sold at auction.

(Priscilla enters R., and observes them.)

I must get her out of the house.

PRISCILLA.

So, Mr. Patch and Miss Lady Genteel, I am glad I've found you together—in the best room, too—now we'll have things straightened out and know who is who.

PELETIAH.

Now, there will be a time I should like to snap off myself for anything short of hanging. (X, going R. U.)

PRIS.

Stop, sir; I'm going to set things to rights and put an end to all these goings on—there's no Kittery blood in me—what did you say to that lady about my complexion?

PELETIAH.

Well, I can't call to mind as I ever said anything injurious to your color, Miss Pease.

(Pris. She has herself so that Miss Bidaway is going up stage—she stops her—cannot get away.)

444 PRIS.

Just you stop.

MISS BID.

I wish no altercation with you, young woman.

PRIS.

Look here, I shall say my say—what do you want of him? You are old enough to be his mother, and you may say what you like, you paint—I can prove it—there's nothing about me but what's real, there ma'am—look; rub my cheeks with washing fluid, cologne, or soap and sand; if you can rub any off I should like to see you do it—or you, sir—rub, rub——

(She goes to each of them offering her face.)

PELETIAH.

I don't want to rub you, Miss Pease; I know it's good color.

PRIS.

Well, try her old skin; take off the white and red; it's as yellow as an oak-tanned side of leather.

MISS BID.

We have her spite. Mr. Patch, if I was of your age I should do as I pleased, and not be led by the nose by a person of vulgar habits.

PRIS.

Vulgar habits; who are you?

PELETIAH.

Now, Priscilla, keep quiet; don't get into a row; they'll have a hen fight if I don't get 'em off soon.

PRIS.

Who are you, ma'am, I should like to know? I ain't ashamed of my situation; I work out for wages, and I ain't above my business.

PELETIAH.

(Getting between them.)

Now, Miss, don't mind the critter; she's a little mad, but she don't mean nothin'.

PRIS.

Yes I do mean just what I say; you, Patch, let her alone.

(She pulls him from Bidaway.)

445 MISS BID.

Well, Miss Impudence, if you go to that, let him alone yourself; I have as much right to him as you have. Patch, come here.

(She pulls him from Priscilla, who in turn pulls him from Bidaway.)

PELETIAH.

Well, gals, hold on, or there'll be nothing left of me.

PRIS.

This thing might as well be settled now as any other time; look me in the face, Patch, after what you have told me about that woman, I should like to know what you mean.

MISS BID.

So should I, if you have said anything against me you shall prove it.

PELETIAH.

I never said nothin' against either of you. If you want to battle it out, go it, ye Bantams, and I will see fair play—I'm some punkins now, I guess.

PRIS.

Didn't you tell me you only walked out with her as a matter of trade—and to please ma'am—and didn't you say she was yellow in the mornin' before she got be'n fixed and rigged and red and white in the afternoon, didn't you say? She got you to buy pink saucers at Leonard's?

MISS BID.

Did you say that? I don't care for anything but the pink saucers.

PELETIAH.

Well, about the saucers, I agree, but I told her it was a speculation to sell to ma'am to fix her silk stockings over.

PRIS.

You Patch—you're a lyin'.

MISS BID.

Ha, ha, ha, if you was worthy of my notice I might tell
446 you what he says about you. He has too much taste, I think, to marry you—you don't know the first idea of gentility—you was brought up in a barn—schooled in a pig sty—and graduated a lady of the first floor of a cotton mill. Ha, ha, ha.

MISS PRIS.

A cotton mill—I always paid my way and wear clean stockings. I don't sneak into folks' houses and invite myself into their parlor and stay there until folks send me awards to get rid of me—whose second-hand dress have you got on—bought it at auction ready made—ha, ha, Miss Gentility.

PELETIAH.

Don't mind what she says, I'll make it right. (To Miss Bidaway.) (Then to Priscilla.) Soon you'll have the ma'am in after us.

PRIS.

Go away from me. (She turns up stage.)

PATCH.

Here's an orange. (He at C. following her.)

MISS BID.

Either you or I leave this house Miss ——, you shall see who is of most importance here. Patch, I insist that you shall go with me; I'll complain of this little fight before the court.

(She seizes Patch by the arm and is carrying him off.)
(Priscilla comes down and seizes him.)

PRIS.

Let him alone; come with me; I'll go with ma'a.

(Miss Bid. and Pris. are both pulling him off when Bridget enters R. H.)

BRIDGET.

What are you doing with the boy? Faix—two to one is one too many all the world over.

PELETIAH.

Three feminines. I shall be murdered if somebody don't come to my help.

447 BRIDGET.

Now ladies, I'll hold him while both of yous settle your own mischief.

(She takes Patch and comes up stage. Priscilla is following them when Miss Bidaway seizes her by the arm.)

PRIS.

Don't you touch me, I'll tear your eyes out.

(The two women seize each other, Miss Bidaway's curls fall off, and both are nearly exhausted.)

(Peletiah takes out his fife, gets on a table and blows, while Bridget brings a looking glass showing it to each of the ladies who, upon discovering their condition, exit hastily at opposite sides R. I. L.)

BRIDGET.

Sure the devil is in 'em all.

(She dances to the music of the fife then both exit.)
(Ready, knock L. U. E. at outer door.)
(Paul enters from the second door.)

PAUL.

I can get no tidings of Rambouiller—no one has seen him since the evening he went to Mr. Champford's. I will let them in.

(Exit R. 2. E.) (Paul goes to door and admits three policemen and Mr. Champford with Horatio C. D.)

POLICE.

You are Paul Derby?

PAUL.

I am, sir.

POLICE.

You will consider yourself a prisoner Mr. Derby—until this house is searched—upon a new charge of robbery.

PAUL.

Who makes this charge?

448 POLICE.

It is unnecessary now to answer that—near the place where you was arrested on the Bridge of the railroad—officers have found some of the mining money—we come here expecting to find other evidence.

PAUL.

Do as you please, I know nothing of the affair.

CHAMPFORD.

Mr. Derby, at the request of the officers of the Police we attended them here, my connection with the bank rendered it consolable in their judgment.

HORATIO.

I am sorry to see you Paul in this difficulty—and we hope that you will be able to prove your innocence—I believe in it Paul.

POLICE.

Where are the ladies of the house?

PAUL.

You will find them in that direction.

(Pointing off an officer, leaves R. I. E.)

POLICE.

Your trunk is in this house?

PAUL.

It is——

POLICE.

Will you give me the key?

PAUL.

There it is, sir—search there you will.

(Other four policemen enter C. D.)

POLICE.

Ask one of the ladies of the house to show you Mr. Derby's room—there is the key of his trunk. Search it, and also every part of his apartment.

(One of the men exit, 2d E. R. U.)

Mr. Derby, if you wish for any legal friend to advise with I have no objection. I shall ask you no questions, and advise you to answer none.

449 PAUL.

My innocence is my defence—I need no other.

(Walter Grant enters—centre door—still as the Astrologer. He looks around.)

GRANT.

Ah, Mr. Champford, I have been at your house and was informed I should find you here. My business being pressing, I have followed you to this place. Will you give me a word?

(The officers are in conversation with Horatio. Champford meets Grant.)

CHAMPFORD.

What would you with me?

GRANT.

You have not complied with my requisition—I told you I would be quiet a day and a half, in consequence of my friend. For five days I have been silent—the sun must not rise again without a settlement between us——

CHAMPFORD.

I am engaged, now, with the officer of the police, in securing the robber of the bank.

GRANT.

Who do you suspect?

CHAMPFORD.

Paul Derby—he is under arrest.

GRANT.

Paul Derby! Have you been plotting his ruin to cover up your deeds, as you did mine nearly twenty years ago?

CHAMPFORD.

The officers are coming—I will explain all to you when the search is over.

(The officers return from R. 2d E. apartment; one of them has a key.)

POLICE.

Mr. Champford, do you know that key?

450 CHAMPFORD.

It is the counterpart of the one that unlocks our vault.

POLICE.

Paul, how's this?

PAUL.

It has never been out of my trunk since the day I finished it. I made it for a man named Belkins. I never saw the lock it fits. I made it from a drawing and model. The man wished me to keep it until he called for it.

POLICE.

That may be true, but the circumstance of its fitting the lock of the bank vault is strong against you. You have also been seen in bad company. I will do my duty to carry you before the magistrate; you may see anybody you wish before you leave.

PAUL.

I have no wish to see anybody. There is some enemy determined on my ruin, and there is no avoiding it.

CHAMPFORD.

Paul, confess; it may go worse with you.

POLICE.

Mr. Champford, do not tempt him to say anything that may injure him hereafter.

(Grant goes up to Champford.)

GRANT.

That young man is no thief—you are one. Save him or I'll denounce you.

CHAMPFORD.

Denounce me! Walter Grant, you are an escaped convict.

(Louisa and Mrs. Rambouiller enter R. H.)

LOUISA.

What's the matter, Paul?—speak.

PAUL.

I am again arrested for robbery.

LOUISA.

The accusation is false.

451 MRS. RAM.

Oh, dear—I wish my old man would come home—there's always something happening when the head of the house is gone—do carry him off.

CHAMPFORD.

Madam, I regret the unpleasant duty that brings me into your house at this time.

HORATIO.

And so do I, Madame; we sympathize deeply with your condition. It is a terrible affliction to have a member of a family like this suffer from a suspicion of a "crime." Miss Louisa, allow me to offer you my deepest sympathy, as I have understood that you was about to enter into the tenderest relation with this culprit.

LOUISA.

I do not need your sympathy, sir. Oh, Paul! Paul!

MRS. RAM.

There. You need not make any more remarks. Come away from him. Oh, dear, what a talk there will be tomorrow!

POLICE.

Perhaps, for the present, the ladies had better retire.

MRS. RAM.

That's a very sensible remark. Come, Louisa.

(She exits with Louisa.)

(Grant has been in conversation with Champford during the above dialogue.)

GRANT.

Explain away that key—or I'll denounce you; I will not ask again.

CHAMPFORD.

No! I defy you.

GRANT.

Mr. Officer—there is the robber of the bank—I will appear before the magistrate and make good the charge.

POLICE.

What reply do you make to this, Mr. Champford?

452 CHAMPFORD.

My position, my character, is the reply I might make—this man is Walter Grant, an escaped convict—there is a document, read it—and apprehend him—I will swear to his identity.

POLICE.

Indeed—how came you on such intimate terms with an escaped convict—further, first, Mr. Champford, you must be content to remain a prisoner.

CHAMPFORD.

I make no objection.

(The officer takes a package from one of the police and lays it on table R. centre.)

POLICE.

Here is a document, sir, which I will need—two thousand dollars robbed—the bank of——

CHAMPFORD.

You need not, sir—I am acquainted with its contents.

POLICE.

On your word alone, Walter Grant if you are, I may not hold the man—If you have any other evidence I will hold this prisoner in custody—if not he must be at liberty.

(X. enter officer.)

GRANT.

Upon the return of Mr. Rambouiller I will prove more than I now allege——

(An officer enters with a pocket book centre door.)

OFFICER.

This pocket book has been found near the place of the accident upon the railroad—and it is feared that its owner has met foul play.

CHAMPFORD.

Now I am safe—Rambouiller dead——

POLICE.

I will attend to it—it is the property of Peter Rambouiller.

(Enter Peletiah R. H. with a smile—shows rubber bag filled with notes V.)

453 PELETIAH.

I heard there's a reward offered about the bank the other night, when I was selling round the railroad bridge, some fellow had a line out with this to the end of it; I just peeked into a little and it's full of money; I heard the constables were here, so I came in to get a reward.

POLICE.

Let me have it.

PELETIAH.

Well, give us the reward list.

POLICE.

If you are entitled to it you shall have it. It must be in the hands of the law first.

PELETIAH.

Then I'm afraid I shan't get much of it. However, you all see me give it to him.

(He gives him the bag.)

POLICE.

Did you recognize the man who had hold of the string?

PELETIAH.

Well, I can't say as I did; but the man as got into the water, I should know him. Well, he looked a little like that gentleman, only not so genteel.

OFFICER.

I'm searching the house of Mr. Champford. We found this suit of workman's clothes, damp and muddy.

CHAMPFORD.

(L. Centre.) Now I'm lost.

HORATIO.

(L. H.) Father, you ought to have burned them; I'm afraid you're done for, and, Mr. Officer, I really can't remain any longer.

POLICE.

(Re-entered.) You are a prisoner, sir—be silent.

454 HORATIO.

A prisoner! Well, an action for false imprisonment will teach you manners and duty at the same time.

POLICE.

Mr. Champford, it is rumored that Mr. Champford is murdered and that the body of the man found on the track of the railroad on the night of his disappearance is his body—though so mutilated as not to be recognized. His family are not aware of the suspicion. You was the last man seen with him alive. Your house has been searched and some grounds for suspicion against you as to the murder of Rambouiller—these clothes are yours—this package is the property of the bank.

CHAMPFORD.

A ridiculous charge——

PELETIAH.

(R. of officer.) (Who has been feeling in his pockets and examining the clothes.)

The man that was in the water that night wore them clothes and no mistake for I pulled off a button and a hunk of cloth when I got hold him—and there's a button and a hunk of cloth gone—off these duds anyhow.

CHAMPFORD.

Confusion——

POLICE.

Where is the button?

PELETIAH.

Why here it is—I saved it. (Pulls it from his pockets.) Fits just like your eye.

POLICE.

There is proof enough. You will attend us to prison.

CHAMPFORD.

And do you let this go——

POLICE.

Justice shall be done to him——

(Rambouiller heard outside centre door.)

455 RAMBOUILLER.

Ah, by ze Tom Cat, I am at home.

(He enters with portmanteau, umbrella—pause, L. picture.)

What's that—hellow, what the Old Harry is the matter?
Eh, ze police in my house?

PAUL.

(R. H.) And you are not dead?

RAMBOUILLER.

(Centre.) Dead? What I be dead for? Ah, Mr. Champford, you didn't pay me that money after all—stole my pocketbook—your note is in it. My friend, you've a pardon I got him of the President. Where is madame—where is Louise? Paul, what you do?

POLICE.

He has been arrested upon suspicion of robbing a bank, but circumstances seem to point in another direction for the true thief.

RAMBOUILLER.

Why, by de Tom Cat, I am surprise. Who said that Paul is a thief, eh?

POLICE.

It is unnecessary at this time to go into particulars. Your presence silences the reports of your death, and the pardon renders it necessary to return that person to prison. There are two persons, however, who will remain in custody.

(Paul and Grant are released.)
(Madame and Louise enter.)

RAM.

Ah, madame—my child—and you Patch—what se devil you all do when I go away?

(They converse together.)

POLICE.

Mr. Champford.

CHAMPFORD.

Sir, must I upon such accusations and circumstances be arrested? You perceive I have denied nothing. Do not attribute my silence to guilt. It is indignation that shut my lips.

456 HORATIO.

I shall reply by attorney.

CHAMPFORD.

I hope you have authority, sir, further deception practiced upon me—you are aware of my position and respectable station.

POLICE.

For three years the eyes of the police have been upon you. You accidentally dropped a letter dated at the jail, addressed to you by Walter Grant, its meaning seem'd obscure yet it proved a clue to your detection now. If such as you think the police is organized to drag miserable drunkards from the gutter, and detect the pilfer- and cheat of law up alone you are mistaken—our task is to prevent crime, and to aid in the detection of law breakers in high life as well as low—and place them at the bar of justice—where it becomes my duty to attend you.

HORATIO.

There is a carriage at the door I hope.

(Police are taking from their pockets handcuffs.)

PELETIAH.

Say, how is it about the reward?

POLICE.

You will know in time.

CHAMPFORD.

I will not go to prison—I am entitled to bail.

POLICE.

That is the business of the examining justice, I hope you do not intend to give us trouble.

CHAMPFORD.

I'll die first—(attempts to take poison—but cuffs are put on each).

(A policeman enters—Mr. Bradley).

BRADLEY.

Sir—the head of the man crushed the other night on the railroad has been found in the water and recognized to be Thomas Phlanger.

POLICE.

It is of no consequence now—to know it here—the gentle-
457 man who was mining is safe returned—Mr. Champford come. Mr. Rambouiller, we shall trouble you no further.

(As they are being led off—Peletiah gets in the way of Horatio and looks at him.)

PELETIAH.

Well for a fast man, you drive rather a slow team now.

HORATIO.

Out of the way fellow—you are not fit to spit upon.

PELETIAH.

Well, you are just about fit.

(They are led off by the police—the other parties coming to the front.)

RAMBOUILLER.

Well, I am astonished—but no matter—ze oder zing is all right.

MAD. RAM.

Well, I declare, who would have thought of it—after this I shan't trust to appearances—well, I declare—I've been a mother to her, I'm sure, and if I did make a mistake in Mr. Champford it was for her good that I was planning against her.

(Peletiah—Miss Pease—Miss Bidaway enter.)

MAD. RAM.

Would you believe it, Miss Bidaway—Mr. Champford is ruined, arrested for robbery—and gone to jail—oh, dear, and I walked up Washington street with him only yesterday.

MISS BIDAWAY.

Then there will be a red flag out of his house for an auction, folks will be crazy to buy something out of his house.

(Miss Pease and Peletiah have been coquetting—Madame has joined her husband.)

RAM.

Paul go get se package I give you—and se little box—bring him here—you Patch how you get on in ze shop—when I'm gone—how did Madame—you want me, eh? (Paul exits.) (L. H.)

458 PELETIAH.

Well Squire we get along pretty well—I got a heap of money for you, trade's been good on sermons.

RAM.

What you talk of dat gal, eh?

PELETIAH.

Oh, nothing particular, Squire——

RAM.

What you do of the table and chair Madame buy at de auction, eh?

PEL.

Sold 'em, according to orders.

(Paul enters with the package of papers and a little box.)

MRS. RAM.

Did you order that beautiful furniture stand?

RAM.

Yes. No more of de auction.

MAD. RAM.

Well, I declare.

RAM.

Nonsense. Paul, take your gal, my friend. You have no father to give zat gal—I give her one—and, if you don't object, I want zat young man to be her husband.

GRANT.

I desire no better (shakes hands with Paul).

RAM.

She knows de story of ze dollar. Paul, keep ze paper. I am sixty years of age. Patch, you are a good boy; you sell de chicken to me, by you dat chicken make you fortune. I give up ze business and I give up my child. Patch, what zat girl look to you for?

PRIS.

Well, life's a lottery, I declare; he's promised to be my husband.

RAM.

Well, take him; and, Madame of de Auction, zere is no husband for you except my old maid and Bridget.

459 MISS BIDAWAY.

No, my life shall be devoted to single blessedness. Don't imagine that I couldn't get a husband.

MRS. RAM.

Miss Bidaway—Bridget—I would make no further remarks.

RAM.

Let her talk ze truth. And now I tell you something, Louise; you don't change your name now for Derby, zat Paul Derby is my own son. Paul, tell me how you feel when you know zat ze old sermon-seller is your father?

PAUL.

I feel, sir, as I ever have—that you have been my best friend.

MRS. RAM.

Why, Mr. Rambouiller, you never told me this—I do declare.

RAM.

Vot you declare—I want to keep him secret; if I tell you everybody know what I don't want him to know——

MRS. RAM.

Well, Peter Rambouiller—I declare.

RAM.

Take care, Madame, "Marmy Williams," etc. (he sings).

MRS. RAM.

There, don't sing that horrid song and I won't make any more remarks.

RAM.

Paul, your mother die soon after you was born. I have a boy and I want a girl, and I have Louise—no matter of dat now. Madame is my wife and very good, if she don't go to Auction. Paul, he has a wife, and Patch, he has a wife—and now Louise I give you up, and zere is ze last dollar, what your grandfather tell my father to keep, I give him to you and I hope you always keep him, and was my friend. I have sell orange and lemon, pine apple and cocoanut to a great many of your fathers and mothers, your uncles and your aunts, I sell, sell out to ze people of ze Patch and if he not try to shave you to- mutch, give him your patronage, ha! ha! by ze Tom Cat it is lucky for him he sell to me ze old hen.

(Patch may be brought forward.)

If it was not for Paul, when I am dead there shall be no more Rambouiller, in Boston. He is Rambouiller and I tell you somesing in your ear, I hope in ze directory zere will be ze name of a good many Rambouiller one of zeze days—good honest citizens, though the name is from France and ze old man is going to bid you all good night, but he shall have nothing else to do but to tell you somesing of his life and he as often as you or your friends like to be with him. He hopes none of you shall ever see de day that misfortune, or rascality of somebody else shall bring you or your purse,

Ze Last Dollar.

(CURTAIN.)

461 MONDAY, *October* 26, *A. D.* 1891.

The court meets pursuant to adjournment, and is opened by proclamation.

Present: Hon. Alfred C. Coxe, judge.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER *et al.* } Final Hearing.

The above-entitled cause coming on for final hearing upon pleadings and proofs—

Stephen H. Olin, Esq., is heard on behalf of the complainant.

Adjourned to Tuesday, October 27, A. D. 1891, 11 a. m.

TUESDAY, *October* 27, *A. D.* 1891.

The court meets pursuant to adjournment, and is opened by proclamation.

Present: Hon. Alfred C. Coxe, judge.

DALY
vs.
WEBSTER *et al.* } Final Hearing.

The above cause still being on argument—

Dittenhoefer & Gerber, Esqs., are heard on behalf of the defendants.

C. A. V.

462 U. S. Circuit Court, Southern District of New York. In Equity.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER *et al.* }

S. H. Olin, for complainant.

A. J. Dittenhoefer & David Gerber, for defendants.

COXE, *J.:*

"This court decided upon a motion for an injunction that the complainant's copyright was invalid because of a fatal variance between the title as registered and the title as published (Daly *v.* Brady, 39 Fed. Rep., 265). The facts, so far as they relate to the question decided, were in all material particulars the same then as now. The law is precisely the same. Every authority now relied upon was presented to the court on that occasion. There is additional evidence tending to show that the defendants were not misled by the variance, but that it existed precisely as stated in the decision is admitted. It is entirely clear, therefore, that if the record in its present form had been before the court the decision would necessarily have been the same. On inspection of the two titles, this court held the copyright void. With the same two titles before it the court cannot now hold the copyright valid.

"The records and briefs have been examined with care to
463 discover a theory upon which the court would be justified in considering the question *de novo*, but none has been found. The court is constrained to follow the former decision. It is *res judicata*.

"The bill must be dismissed."

(Endorsed:) U. S. circuit court. Filed Nov. 4, 1891. John A. Shields, clerk.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the court-house in the city of New York, on the 26th day of October, 1891 (October term, 1891).

Present: Hon. A. C. Coxe, district judge, sitting in equity.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded with HENRY C. MINER, Defendants. } In Equity.

This cause having come on to be heard on final hearing—

On the bill of complaint herein, the answers filed by the defendants herein, the replication of the complainant to such answers and the proofs, oral, documentary and written, taken and filed in said cause, and the said cause having been duly argued, orally and upon
464 written arguments by Stephen H. Olin, of counsel for the complainants, and A. J. Dittenhoefer, of counsel for the defendants:

Now, therefore, on consideration thereof, it is ordered, adjudged and decreed, that the bill of complain*ant* be, and the same hereby is, dismissed upon the merits thereof, with costs to the defendants Webster and Brady, herein, to be taxed and inserted by the clerk of this court.

(Signed) ALFRED C. COXE, *U. S. J.*

(Endorsed:) U. S. circuit court. Filed Nov. 14, 1891. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

AUGUSTIN DALY, Complainant and Appellant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Defendants and Respondents, Impleaded with Another.

And now comes Augustin Daly, the plaintiff herein, by Olin, Rives & Montgomery, his solicitors, and in connection with his appeal from the decree herein of the circuit court of the United States for the southern district of New York, dismissing plaintiff's bill of complaint, makes and files the following assignments of errors:

465 First. That the Honorable Alfred C. Coxe, the judge presiding at the trial of the said case, dismissed the complainant's bill of complaint.

Second. That the said judge held and decided that the copyright set forth in the plaintiff's bill of complaint was not a valid copyright, whereas the said judge should have held that the said copyright was and is in all respects valid.

Third. That the said judge did not direct judgment in accordance with the prayer of the complaint.

Fourth. That the said judge held that the said copyright was invalid, because the title of the book, as filed, differed from the title page of the book as published.

Whereas, he should have held and decided that the title as filed agreed in substance with the title page as published, and that the difference between them was not prejudicial to the said copyright.

And by reason of the aforesaid errors the said Augustin Daly prays that the decree and judgment aforesaid may be reversed, annulled and altogether held for naught, and that the case be remanded to the circuit court with directions that a decree be entered in favor of the complainant, in accordance with the prayer of the bill of complaint; and that he may have such other relief as to the court may seem just.

OLIN, RIVES & MONTGOMERY,
Solicitors for Appellant.

G. L. RIVES, *Of Counsel.*

(Endorsed:) U. S. circuit court of appeals for the 2d circuit. Augustin Daly *vs.* Geo. P. Webster and ano. impleaded. (Copy.) Assignment of errors and notice. Olin, Rives & Montgomery, solicitors for appellant, 32 Nassau street, New York city. U. S. circuit court. Filed Dec. 4, 1891. John A. Shields, clerk.

466 United States Circuit Court of Appeals for the Second District.

AUGUSTIN DALY, Plaintiff in Error and Appellant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded with Another, Defendants in Error and Appellees.

And afterwards, to wit, on the 2d day of January, 1892, in said term, the said defendants in error, by A. J. Dittenhoefer, their attorney, come here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment and decree aforesaid.

And they pray that the said circuit court of appeals before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment and decree aforesaid, in form aforesaid given, may be in all things affirmed, &c.

A. J. DITTENHOEFER,
Attorney for Defendants in Error and Appellees.

A. J. DITTENHOEFER, *Of Counsel.*

(Endorsed:) United States circuit court of appeals for second circuit. Augustin Daly, plaintiff in error, *vs.* George P. Webster and William A. Brady, impleaded with another, defendants in error. Joinder in error. A. J. Dittenhoefer, attorney for def't in error, 96 Broadway, New York. U. S. circuit court. Filed Dec. 8, 1891. John A. Shields, clerk.

467 United States Circuit Court for the Southern District of New York. In Equity.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, Defendants.

To the honorable the United States circuit court of appeals for the second circuit:

The appeal of the above-named Augustin Daly, complainant and appellant, respectfully showeth:

That upon the 20th day of May, 1889, your petitioner filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendants and respondents, praying that the said defendants be enjoined and restrained from producing or performing a certain dramatic composition entitled "After Dark," or any colorable imitation thereof or of the railroad scene therein, or of complainant's play entitled "Under the Gaslight," or of the railroad scene therein, and for an accounting and for an injunction pending the final determination of the suit, and for such other relief as might be just and proper; that on the same day an order was made and entered requiring the defendants to appear and show cause why an injunction should not be granted as aforesaid, and that on the 31st day of May, 1891, said motion was argued before the Honorable William J. Wal-
468 lace, judge, and thereafter and on the 20th day of June, 1891, a decision was filed by him denying said motion, and that on the 23d day of July, 1891, an order to that effect was entered and filed in the clerk's office.

That on or about the 3d day of June, 1889, the defendants Webster and Brady filed their joint answer denying the averments in said bill, and praying that it be dismissed with costs.

That on or about the 16th day of September, 1889, the defendant Miner filed his separate answer.

That on or about the 3d day of July, 1889, the complainant filed his replication, denying the averments of said answer of the defendants Webster and Brady, and on or about the 11th day of December, 1889, filed his replication denying the averments in the said answer of the defendant Miner.

That thereafter the complainant and the defendants Webster and Brady took their respective proofs for final hearing under the 67th rule of the Supreme Court as amended, and that thereafter and on

or about the 26th day of October, 1891, a final hearing was had in open court before the Honorable Alfred C. Coxe, judge.

That on the 14th day of November, 1891, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed that the bill of the complainant be dismissed, with costs.

Wherefore, this appellant appeals from the whole of said decree of the said circuit court of the United States, and respectfully prays that the said decree of said circuit court, and the bill of complaint, answers, replications and transcript, and all the pleadings, depositions, evidence, exhibits, proofs and proceedings in the said cause may be sent to the United States circuit court of appeals for the second circuit without delay, and that the said United States circuit court of appeals for the second circuit will proceed to hear
469 the said cause anew, and that the said decree dismissing the said bill of complaint and every part thereof may be reversed, and a decree made by the United States circuit court of appeals for the second circuit that this complainant and appellant is entitled to the relief prayed for in the said bill of complaint, and that the cause may be remanded to said circuit court for final trial and hearing, and for costs against said defendants and appellees in favor of this complainant and appellant, in this court and in the said circuit court, and for such other decree as to the United States circuit court of appeals for the second circuit may seem just.

OLIN, RIVES & MONTGOMERY,
Solicitors for Appellants.

G. L. RIVES, *Of Counsel.*

The foregoing appeal is hereby allowed.
New York, December 4, 1891.
(Signed) E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court of appeals for the 2d circuit. In equity. Augustin Daly *vs.* George P. Webster *et al.* Appeal. Olin, Rives & Montgomery, solicitors for complainant, appellant, 32 Nassau street, New York city. (Stamped:) A copy received Dec. 5, 1891. Dittenhoefer & Gerber.

(File-mark:) U. S. circuit court. Filed Dec. 7, 1891. John A. Shields, clerk.

470 U. S. Circuit Court of Appeals for the Second Circuit.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded }

Know all men by these presents, that we, Augustin Daly, of No. 14 West Fiftieth street, New York city, and Richard Dorney, of No. 141 West Fifteenth street, New York city, are held and firmly bound unto George P. Webster and William A. Brady in the sum of six hundred dollars, to be paid to the said George P. Webster and William A. Brady, their executors, administrators or assigns,

for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the 3d day of December, in the year of our Lord one thousand eight hundred and ninety-one.

AUGUSTIN DALY. [L. S.]
RICHARD DORNEY. [L. S.]

Whereas, the above-named Augustin Daly, as appellant has appealed to the circuit court of appeals of the United States for the second circuit from a decree of the circuit court of the United States for the southern district of New York, bearing date the 26th day of October, 1891, in a suit in which said Augustin Daly was the complainant against the said George P. Webster, William A. Brady and Henry C. Miner, defendants:

471 Now, therefore, the condition of this obligation is such that if the above-named appellant, Augustin Daly, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against him, as such appellant therein, if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Sealed and delivered and taken and acknowledged this 3d day of December, 1891, before me.

GEO. B. HEATH,
[SEAL.] *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Richard Dorney, being duly sworn, deposes and says: That he resides in the southern district of New York, that he is worth the sum of twelve hundred dollars over and above all his just debts and liabilities.

RICHARD DORNEY.

Sworn to this 3d day of December, A. D. 1891, before me.

GEO. B. HEATH,
[SEAL.] *Notary Public, N. Y. Co.*

This bond approved as to form and amount and sufficiency of surety.

Dated New York, Dec. 4, 1891.

(Signed) E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court of appeals for the 2nd circuit. In equity. Augustin Daly *vs.* George P. Webster *et al.* Supersedeas bond on appeal. Olin, Rives & Montgomery, solicitors for complainant, appellant, 32 Nassau street, New York city. U. S. circuit court. Filed Dec. 4, 1891. John A. Shields, clerk.

472 By the Honorable E. Henry Lacombe, one of the justices of the United States circuit court of appeals for the second circuit.

To George P. Webster and William A. Brady:

Whereas, Augustin Daly has lately appealed to the United States circuit court of appeals for the second circuit from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said George P. Webster and William A. Brady, and has filed the security required by law; you are therefore to appear before the said United States circuit court of appeals for the southern district of New York, at the city of New York, on the 2d day of January, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 4th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

(Signed) E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court of appeals for the 2d circuit. Augustin Daly, compl't, appellant, *vs.* Geo. P. Webster and William A. Brady, impleaded, def'ts, resp'ts. Sir: You will please enter my appearance for the defendants, respondents, in this cause. (S'g'd) A. J. Dittenhoefer, solicitor for def'ts, respondents, Webster & Brady. To John A. Shields, Esq., clerk U. S. circuit court of appeals for 2d circuit. (Stamped:) A copy received Dec. 5, 1891. Dittenhoefer & Gerber.

U. S. circuit court of appeals for the second circuit. In equity. Augustin Daly *vs.* George P. Webster *et al.* Citation and notice. Olin, Rives & Montgomery, solicitors for complainant and appellant, 32 Nassau street, New York city.

(File-mark:) U. S. circuit court. Filed Dec. 7, 1891. John A. Shields, clerk.

473 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of New York, Greeting:

Whereas lately, in the circuit court of the United States for the southern district of New York, before you or some of you, in a cause between Augustin Daly, complainant, against George P. Webster, William A. Brady, and Henry C. Miner, defendants, wherein the decree of the said court is in the words and figures following, viz:

"This cause having come on to be heard on final hearing on the bill of complaint herein, the answers filed by the defendants herein, the replication of the complainant to such answers, and the proofs, oral, documentary, and written, taken and filed in said cause, and the said cause having been duly argued, orally and upon

written arguments, by Stephen H. Olin, of counsel for the complainants, and A. J. Dittenhoefer, of counsel for the defendants:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed that the bill of complaint be, and the same hereby is, dismissed upon the merits thereof, with costs to the defendants Webster and Brady herein, to be taxed and inserted by the clerk of this court.

(Signed) ALFRED C. COXE, *U. S. J.*

474 as by the inspection of the transcript of the record of the said court, which was brought into the United States circuit court of appeals for the second circuit by virtue of an appeal taken out by the said Augustin Daly, complainant and appellant, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-one, the said cause came on to be heard before the said United States circuit court of appeals for the second circuit on the said transcript of record and was argued by counsel;

On consideration whereof it is ordered, adjudged, and decreed by this court that the said final decree of the circuit court of the United States for the southern district of New York, and any and all judgments entered therein, be, and the same hereby is, reversed, and the said circuit court of the United States for the southern district of New York is hereby instructed to enter the usual decree for account and perpetual injunction, with costs to the complainant, appellant, and against the defendants, respondents, in the said circuit court and in this court, all in accordance with the opinion of this court:

You therefore are hereby commanded that such further
475 proceedings be had in said cause in conformity with the opinion of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 27th day of October, in the year of our Lord one thousand eight hundred and ninety-two.

Costs of—

Clerk	$18 15
Printing record	267 24
" briefs	31 10
Attorney	20 00
	$336 49

JOHN A. SHIELDS,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

(Endorsed:) United States circuit court of appeals for the second circuit. No. 67. October term, 1891. Augustin Daly, complain-

ant & appellant, *vs.* George P. Webster, Wm. A. Brady, impleaded with Henry C. Miner. Mandate. Filed Nov. 5, 1892.

476 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the court-house, in the city of New York, on the 5th day of November, 1892.

Present: The Hon. E. Henry Lacombe, circuit judge.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants.

This cause having been heard upon appeal before the United States circuit court of appeals for the second circuit upon the transcript of the record sent up from this court, and a mandate of the said circuit court of appeals having been filed in this court directing that the decree of this court heretofore entered on the 14th day of November, 1891, be reversed, and that the usual decree for account and perpetual injunction be entered by this court, with costs of both courts to said complainant:

Now, upon the said mandate and upon all the pleadings and proceedings herein, and on motion of Olin, Rives & Montgomery, solicitors for the complainants, it is—

Ordered, adjudged, and decreed that the decree of the circuit court of appeals be, and the same hereby is, made the decree
477 of this court, and that the final decree of this court in this cause entered on the 14th day of November, 1891, be, and the same hereby is, reversed.

And it is further ordered, adjudged, and decreed that the copyright of the dramatic composition entitled "Under the Gaslight" obtained on the first day of August, 1867, by Augustin Daly, being the copyright referred to in the bill of complaint herein, is good and valid.

That the said Augustin Daly is the author of the dramatic composition entitled "Under the Gaslight" as described and claimed in said copyright, and is the sole and exclusive proprietor and owner of said dramatic composition.

That the said Augustin Daly is the originator of the railway scene as used in said dramatic composition entitled "Under the Gaslight," and that said railway scene is covered and protected by the said copyright.

That the said George P. Webster and William A. Brady, impleaded, the defendants herein, have disregarded said copyright and violated the exclusive rights of the complainant under the same—that is to say, by producing a colorable imitation of said "Under the Gaslight" entitled "After Dark," and by using and producing the railway scene as copyrighted in the dramatic composition entitled "Under the Gaslight," and in divers ways violated said complainant's rights under the copyright obtained by him on the

dramatic composition entitled "Under the Gaslight," as charged in said bill of complaint.

478 And it is further ordered, adjudged, and decreed that the said complainant recover of the said defendants his costs, charges, and disbursements in this suit both in the circuit court of appeals, as taxed at $336.49, and in this court, as taxed at $629.59, and that the said complainant have execution for such costs.

And it is further ordered, adjudged, and decreed that it be referred to John E. Ward, Esq., one of the masters of this court, residing in the city of New York, to ascertain, take, state, and report to the court an account of the number of times the said railway scene was used, produced by said defendants without the sanction and authority of said complainant in said dramatic composition entitled "After Dark," and where each and every of such unauthorized performance and production took place and the terms and agreements under which said unauthorized performance took place.

And it is further ordered, adjudged, and decreed that the complainant on such accounting have the right to cause an examination of said defendants and each of them, their agents or

479 servants *ore tenus* or otherwise, and also the production of all books, vouchers, and documents of said defendants, their agents or servants, and that the said defendants, their agents or servants, attend for such purpose before said master from time to time as said master shall direct.

And it is also further ordered, adjudged, and decreed that a perpetual injunction be issued in this suit against the said defendants, restraining them, their agents, servants, and all claiming or holding under or through them, from producing or performing the dramatic composition entitled "Under the Gaslight" or any colorable imitation or representation thereof or of producing or using or in any manner adapting or applying the railway scene as used in the dramatic composition entitled "Under the Gaslight" in any other dramatic production and from advertising or announcing any performance or representation of said dramatic composition entitled "Under the Gaslight" or of said railway scene therein pursuant to the prayer of the said bill of complaint.

E. HENRY LACOMBE.

480 United States Circuit Court for the Southern District of New York, Second Circuit.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants.

Please take notice that a decretal order of which the within is a copy will be presented for settlement at a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the court-house, in

the city of New York, on the 4th day of November, 1892, at 11 o'clock in the forenoon of that day.

Dated 1 November, 1892.

Yours, etc., OLIN, RIVES & MONTGOMERY,
Solicitors for Plaintiff, 32 *Nassau Street, N. Y. City.*

To Messrs. Dittenhoefer & Gerber, 96 Broadway, New York city.

(Endorsed:) U. S. circuit court for the southern district of New York. Augustin Daly against George P. Webster and another. Notice and decretal order in equity. Olin, Rives & Mont-
481 gomery, attorneys for complainant, 32 Nassau street, New York city. Due and timely service of a copy of the within decretal order & notice is hereby admitted this 1st day of November, 1892. A copy received Nov. 1, 1892. Dittenhoefer & Gerber. U. S. circuit court. Filed Nov. 5, 1892. John A. Shields, clerk.

482 Circuit Court of the United States for the Southern District of New York.

AUGUSTIN DALY, Complainant,
against
WILLIAM A. BRADY and GEORGE P. WEBSTER, Impleaded, etc., Defendants.

Notice is hereby given that the hearing before John E. Ward, Esq., one of the masters of this court appointed by an order or decree herein entered and filed in the office of the clerk of this court on the 5th day of November, 1892, referee to ascertain, take, state, and report to the court an account of the number of times the railway scene alluded to in said order was used and produced by the defendants and where each and every of such performances and productions took place and the terms and agreements under which said performances took place, will proceed at his office, No. 59 Wall street, in the city of New York, on the 22nd day of November, 1892, at 11 o'clock in the forenoon of that day.

Dated November 14th, 1892.

Yours, etc., OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant, 32 *Nassau Street, New York City.*

To A. J. Dittenhoefer, Esq., solicitor for defendants, 96 Broadway, New York city.

483 (Endorsed:) U. S. circuit court for the southern district of New York. Augustin Daly *vs.* George P. Webster and another. Notice of hearing. Olin, Rives & Montgomery, solicitor-for complainant, 32 Nassau street, New York city. A copy received Nov. 14, 1892, 4.25 p. m. Dittenhoefer & Gerber. Filed Nov. 15, 1892.

484 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and Others.

Before Hon. John E. Ward, Referee.

NEW YORK, *November* 22, 1892.

Appearances.

For complainant: Olin, Rives & Montgomery, Esqs.; Mr. Olin, of counsel.

For defendants: Dittenhoefer & Gerber, Esqs.; Mr. Gerber, of counsel.

WILLIAM A. BRADY, being duly sworn, testifies as follows:

Direct examination by Mr. OLIN:

Q. Mr. Brady, you are one of the defendants in this suit by Augustin Daly against George P. Webster and others?

A. Yes, sir.

Q There is a firm of Webster & Brady in theatrical ventures. Is that the fact?

A. I am not a partner of Mr. Webster.

Q. In anything?

A. Well, I have an interest with him. I received an interest in an attraction that he is interested in, to book it, but I am not his partner. I receive a certain percentage of the receipts of the "Bottom of the Sea" for services that I render, but I am

485 not a partner. I am not responsible for his debts.

Q. Do you know the play "After Dark"?

A. Yes, sir.

Q. By Dion Boucicault?

A. Yes, sir.

Q. Who is the owner of that play in this country at the present time?

A. Myself.

Q. How long have you been the owner of that play?

A. I should think close on to four years.

Q. How did you acquire the play?

A. I bought it from Dion Boucicault.

Q. Have you the manuscript of that play?

A. Yes, sir.

Q. Is it in writing or in print?

A. I have it in writing and in print—that is, I have a prompter's print copy of it, not the published copy.

Q. Will you produce that copy?

Objected to and question withdrawn for the present.

Q. After purchasing that play did you form a company for its production?

A. Not immediately.

Q. But you did after purchasing the play?
A. Not immediately.
Q. But you did at some time after purchasing the play?
A. Yes.
Q. And when did you commence producing that play?
A. Well, I first bought the Pacific-coast right for the play of Mr. Boucicault, and for a time I played it, I should judge, once a week in a repertoire, an organization known as the Webster-Brady Company. I then made a dramatization of "She," and the Webster-Brady Company played that dramatization for a year and a half. I met Mr. Boucicault in Chicago, and I purchased a
486 further right for "After Dark," which included all of the territory west of Chicago. I then played the piece in Chicago. I then dropped it and returned to "She," went back to California, down over the Southern Pacific to New Orleans, made a return trip through Texas, and then, I should judge, I played the piece about——
Q. (Interrupting.) That is, "After Dark"?
A. "After Dark"—two weeks in Texas. I then returned to "She;" came to New York from this part of Texas—San Antonio—to an advertised sale of plays of Mr. Boucicault's, which was announced to take place at the Madison Square theatre, which was stopped by Mr. Waldron, and after the proposed auction sale had been stopped I made an arrangement with Mr. Boucicault to purchase "After Dark" for the United States, Canada, etc.; that brings me up to the time of the injunction papers being first served upon me.
Q. After that purchase of the play, where did you first produce the play afterwards? The play "After Dark," I mean.
A. After the purchase?
Q. Yes.
A. Philadelphia.
Q. And that was a production after you had had some correspondence with Mr. Daly?
A. I had no correspondence with Mr. Daly.
Q. Mr. Daly's attorneys? You wrote to Mr. Daly and received an answer from his attorneys?
A. Yes.
Q. At this production in Philadelphia you modified the railroad scene in After Dark, so as to suspend the character who was exposed to peril from the approaching railroad train above the track. Isn't that so?
A. No, sir.
487 Q. Did you perform it exactly as it was in the play "After Dark"?
A. Where?
Q. In Philadelphia?
A. In Philadelphia, yes; exactly as it was in the play After Dark. I want to retract that answer.
Q. (Repeated.)
A. Which play, After Dark?
Q. Dion Boucicault's play "After Dark"?

A. Now, while we are on that question, I never played Dion Boucicault's "After Dark." It was Dion Boucicault's After Dark entirely rewritten by myself. I have never played Dion Boucicault's After Dark as he produced it; never.

Q. When did you make your first adaptation of the play?

A. When I first took the manuscript; when I first played it on the Pacific coast.

Q. Have you the adaptation produced by you?

A. Yes, sir.

Q. The railroad scene as produced by you in Philadelphia was somewhat different from the scene as afterwards produced here in Miner's theatre, was it not?

A. Yes, sir.

Q. Each of those performances was somewhat different from the railroad scene as produced in the Grand Opera House in this city?

A. What production at the Grand Opera House in this city?

Q. Subsequent to the production at Miner's theatre; the next production at the opera house subsequent to the one in Miner's theatre?

A. Do you mean after Judge Wallace had rendered his decison?

Q. Yes. The question is, was the railroad scene, as given by you at the Grand Opera House and the first production after
488 Judge Wallace's decision different from the railroad scene as it had been given at Miner's theatre and at Philadelphia, as you have already testified.

Mr. GERBER: That I object to on the ground that it refers to performances given after the commencement of this suit; not to any performances referred to in the bill and after Judge Wallace, on the motion for an injunction, had decided that the copyright was invalid.

Objection overruled. Exception.

A. The production of the railroad scene at the Grand Opera House in New York, after Judge Wallace's decision, was not the same as the production at the People's theatre or the production at the National, in Philadelphia.

Q. How long after Judge Wallace's decision did you continue to produce the play After Dark?

Mr. GERBER: All this is subject to the same objection and exception.

The REFEREE: Yes.

A. I should judge two whole theatrical seasons and a portion of one.

Q. And when did you cease to produce it—do you remember about the time—or are you still producing it?

A. I am not still producing it.

Q. When did you cease producing it?

A. Well, I ceased producing it a good many times.

Q. When did you produce it for the last time?

A. The moment that I was ordered.

Q. By the——

A. (Interrupting). The day that the court of appeals handed down the last decision—that is, I won't swear to that. I tele-
489 graphed to my representative to stop. I know that.

Q. About that time?

A. About that time.

Q. Now, between the time of Judge Wallace's decision and the time that you stopped producing it on information of the decision of the court of appeals was the railroad scene produced as it had been at the Grand Opera House?

A. Part of the time; yes.

Q. How much of the time?

A. When I get my books I think I will be able to tell you pretty close on to every time that I did.

Q. What is your best recollection?

A. Well, I will have to explain myself. Several times since the decision of Judge Wallace I have tried other scenes—other railroad scenes. I have been tinkering with the piece, altering it here and there, that act and other acts, and a number of times I have tried another arrangement of that act.

Q. How many other arrangements of that act have you tried, according to your best recollection?

A. Three or four.

Q. When did you try the first, according to your best recollection?

A. During the first season after Judge Wallace's decision.

Q. Where?

A. I tried a new scene at the Haymarket theatre, in Chicago.

Q. How long did you continue that trial?

A. Each trial, I couldn't tell you how long, not more than three or four performances.

Q. When did you try the second of these three or four
490 changes?

A. They were tried under my direction. The second year I was not with the company and the second trial was made by my people with the company.

Q. Where?

A. Out West somewhere; I can't tell you where.

Q. How long did that continue?

A. I couldn't tell you that; a very short time.

Q. More than a week?

A. No.

Q. Where and when did you try the third of these changes?

A. Indianapolis.

Q. When was that?

A. Last season.

Q. How long did that continue?

A. That was also done while I was not with the company. I should say the same number of performances; just a trial.

Q. About a week or less?

A. Or less.

Q. Then after that did you try any other changes?

A. That I can't answer.

Q. Do you know of any others after this one at Indianapolis?

A. We always tried to improve the scene. We have a man doing that who has been with the company right along with that production.

Q. Do you know of any other change after that at Indianapolis?

A. I do not know of any.

Q. And except for these three changes which you have spoken of, the railroad scene has been performed as it was at the Grand Opera House, has it not?

A. I couldn't swear to that.

Q. To the best of your knowledge has it?

A. Not to the best of my knowledge.

Q. Have you any knowledge of any other changes except those that you have spoken of?

491 A. Well, now, I cannot swear, Mr. Olin, that that scene was done every night exactly as it was done at the Grand Opera House. I have not been with the company but the first season it was out.

Q. How long did you remain with it after Judge Wallace's decision?

A. Through one season.

Q. And during that season, except as you have stated in your testimony, was the railroad scene performed substantially as it was at the Grand Opera House?

A. What would you mean by "substantially"? For instance, you may not be aware of the fact that the railroad scene as performed at the Grand Opera House is a very hard piece of theatrical mechanism to work right, and it might go one way and might go another and might not go another.

Q. But the attempt was made each time during the season to make it go as it went at the Grand Opera House, was it not?

A. With the exception of the times that I have mentioned—with the exception of the times that I have mentioned that season. What has been done since I have been away from the company I am not aware of.

Q. Since the end of that theatrical season you say you have not been in charge of the company?

A. No.

Q. Who has been in charge of it?

A. A man named Elmer.

Q. Is he an actor or manager?

A. He is both.

Q. And did he act in the play?

A. Sometimes.

Q. Where is he now?

A. He is with the company now.

Q. Where is the company?

A. The company is in Portland, Oregon, tonight.

Q. Is there any person in this city who has been with the
492 company during any of the seasons following the one you were with it?

A. I do not know.

Q. Do you know of any such person?

A. No, sir.

Q. Where do you reside?

A. New York.

Q. Will you, before the next hearing, prepare a statement showing the places and times at which you have performed the play After Dark during the period covered by your testimony?

A. As far as I can I will produce such a statement.

Further hearing is adjourned until tomorrow at eleven o'clock a. m.

United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER & O'rs. } Before Hon. John E. Ward, Referee.

NEW YORK, *November* 23, 1892.

Present: The referee and counsel as before.

Defendants' counsel asks for an adjournment until Friday, November 25, at 12 o'clock m.

Adjourned accordingly.

493 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER & O'rs. } Before Hon. John E. Ward, Referee.

NEW YORK, *November* 25, 1892.

Present: The referee and counsel as before.

WILLIAM A. BRADY further testifies as follows:

Examination by Mr. OLIN resumed:

Q. Have you, Mr. Brady, made out a statement, as you were asked to do at the last hearing when you were present, showing the places where and the times when this play of "After Dark" was produced?

Witness produces books.

A. These books show that.

Q. You have not made such a statement?

A. No.

Mr. GERBER: Counsel for defendants Webster and Brady states that he produces the original books, which will show the times and

the places where the play was performed and the receipts and disbursements; that they are the original books as kept by the defendants.

Q. Pages of the account book—95, 96, 98, 99, 100, 105, 106, 107, 108, 109, and 110—what are those?

A. They are pages from the books of the season of 1888–1889, during which the company had played "She," and these are the accounts of the two weeks, May 13 and May 20, in which
494 "After Dark" was produced in New York at the People's theatre, where this injunction action first began.

Q. How can I tell from those entries on those pages where the play was produced during that time?

A. No way except by my marking them for you. That is the only way, by marking them. Most of the items show they were paid in New York, and you are aware of the fact that we played those two weeks in New York.

Q. Where did you first play after the week ending May 27?

A. That is the end of the regular theatrical season. We closed there and opened in Bridgeport, August 12, 1889.

Q. The book marked "day book," having the first entry on page 2, "week of Aug. 12, 1889," relates entirely to "After Dark"?

A. With the single exception of June 9 and June 16, when I used "After Dark" to make a production of the "Irish Arab" in San Francisco.

Q. That was in 1890?

A. That was in 1890. You see, you will find two weeks there.

Q. Take that book, if you please, and state where you first produced "After Dark" subsequent to May, 1889, and when.

A. Bridgeport, Connecticut.

Q. What day?

A. August 12 and 13.

Q. Where next?

A. Hartford.

Q. What dates?

A. 14th and 15th.

Q. Where next?

A. Lynn, Massachusetts.

Q. What dates?

A. 16 and 17.

Q. Where next?

A. Boston, August 19 to 24.

Q. What theatre at Boston?

A. The Grand opera house.

Q. Where and when next?

A. Baltimore, August 26 to 31st.

Q. What theatre?

A. The Academy of Music.

495 Q. Continue to mention the performances, giving the dates, places, and the theatre?

A. Washington, Harris' theatre, September 2 to 7.

Richmond, Virginia, August 9, 10, and 11, Mozart academy.
Lynchburg, 12th, opera house.
Knoxville, 13th and 14th, opera house.
Chattanooga, Tennessee, September 16 and 17, opera house.
Where I don't say the theatre it will mean the opera house. Where there is any special theatre I will say it.
Atlanta, 18th and 19.
Athens, Georgia, 20th.
Augusta, Georgia, 21st.
Charleston, South Carolina, 23rd and 24th.
Savannah, Ga., 25 and 26.
Macon, Ga., 27 and 28.
Columbus, Ga., 30th.
Birmingham, Alabama, October 1 and 2.
Selma, Alabama, October 3.
Mobile, Alabama, 4 and 5.
New Orleans, La., October 6th to 12th.
New Iberia, La., 13.
Galveston, Texas, 14th and 15th.
Houston, Texas, 16th and 17th.
San Antonio, Texas, 19th and 20th.
Austin, Texas, 20th and 21st.
Waco, Texas, 22nd.
Fort Worth, Texas, 23rd.
Dallas, Texas, 24th, 25th, and 26th.
Memphis, at the Memphis theatre, October 28, 29th, 30th,
496 31st, and November 1, and matinee on the 2nd at the Memphis theatre.
Louisville, Harris' Bijou theatre, November 4th to 9th; matinee there.
Q. More than one?
A. Three. I can't swear to the performances there, as I was not there. I was not in Louisville the week they played there.
St. Louis, Pope's theatre, November 10th to 16th.
Q. Matinees there?
A. Matinees there; yes.
Q. How many?
A. Three.
Evansville, Ind., 17th.
Terra Haute, Ind., 18th.
Fort Wayne, 19th and 20th.
Kalamazoo, Mich., 21st.
Jackson, Mich., 22nd.
Elgin, Ill., 23rd.
Haymarket theatre, Chicago, November 24th to 30th; three matinees.
Milwaukee, December 1.
Lima, Ohio, December 2.
Findlay, Ohio, 3rd.
Piqua, Ohio, 4th.
Sandusky, Ohio, 5th.

Youngstown, Ohio, 6th.
Beaver Falls, 7th, at the 6th Avenue theatre.
Meadville, December 9th.
Franklin, Penn., 10th.
Erie, Penn., 11th.
Bradford, Penn., 12th.
Newburgh, New York, 13th.
497 Birmingham, Conn., 14th.
Grand Opera House, New York, December 16th to 21st; two matinees.
Theatre Comique, Harlem, December 23 to 28; two matinees.
Bijou theatre, Pittsburgh, December 30 to January 4; two matinees.
People's theatre, New York, January 6th to 11th; two matinees.
New Haven, January 13th.
Bridgeport, January 14th and 15th, at Hawes' opera house.
Newport, R. I., 16th.
Fall River Academy of Music, January 17th and 18th; matinee in Fall River.
Grand Opera House, Brooklyn, January 20 to 25; two matinees.
Wilkes Barre, Penn., January 27.
Trenton, New Jersey, January 28 and 29.
Allentown, Penn., January 30.
Reading, Penn., January 31st.
Easton, Penn., February 1.
Philadelphia, February 3 to 8, at the Arch Street theatre; two matinees.
Hartford, Conn., February 10.
Meriden, 11th.
Holyoke, Mass., 12th.
Springfield, Mass., 13th.
Lynn, Mass., 14th and 15th, including a matinee.
Grand Opera House, Boston, February 17 to 22; three matinees.
498 Gaiety theatre, Providence, February 24th to 29th; three matinees.
Morristown, Penn., March 3.
Wilmington, Del., 4th and 5th.
Lancaster, 6.
Pottstown, 7.
Mauch Chunk, 8.
Williamsburgh or Brooklyn, E. D., March 10 to 15, at Novelty theatre.
Jersey City, at the Academy of Music, March 17 to 22; three matinees.
Paterson, New Jersey, 24th, 25th, and 26th, including matinee.
Hoboken, 27th, 28th, 29th, & 30th; two matinees.

Then the company closed for one week and opened what is known as a Pacific-coast trip at the time at Haviland's theatre, in Chicago, and played there until the 12th, with three matinees, and then to

Minneapolis, at the Bijou theatre, April 13 to 19, with two matinees.

St. Paul, April 20th to 23rd, with two matinees.

Duluth, Minn., 24th and 25th, with one matinee.

Brainerd, Minn., April 28.

Fargo, Dakota, 29th.

Grand Forks, North Dakota, 30th.

Fargo, North Dakota, May 5.

Bismarck, Dakota, 6th.

Glendive, Montana, 7th.

Miles City, Montana, 8th.

Bozeman, Montana, 9th.

499 Marysville, Montana, 10th.

Helena, Montana, 11th.

Butte City, Montana, 12th, 13th, and 14th.

Missoula, Montana, 15th.

Spokane, Washington, 16th and 17th.

Seattle, Washington, May 19th and 20.

Port Townsend, Washington, May 21.

We then went to Canada to May 22nd, in Victoria, B. C.

Then Tacoma, Washington, 23rd and 24th.

Portland, Oregon, 25th, 26th, and 27th.

Astoria, Oregon, 28th and 29th.

San Francisco, June 2 to 8, one matinee, at the Alcazar theatre.

I produce another play, the "Irish Arab," and there is no record of it here; it is unnecessary.

San José, Cal., June 23.

Q. "After Dark" again?

A. Yes. Well, as that question is asked me, I must say the "Irish Arab" was simply tried in California. That was the original arrangement when we started.

San José, June 24.

Napa, 25th.

Woodland, Cal., 26th.

Sacramento, 27th and 28th.

Virginia City, Nevada, 29th.

Carson City, Nevada, 30th.

Reno, Nevada, July 1.

Park City, Utah, July 3.

500 Salt Lake City, Utah, July 4th and 5th, with one matinee.

The company was burned out there and everything destroyed—scenery and everything else.

July 7th to 12th, Tabor Grand Opera House, Denver.

Q. Still playing "After Dark"?

A. Yes, sir.

Aspen, Col., July 14.

Leadville, Col., 15th and 16th.

Salida, Col., 17th.

Pueblo, Col., 18th.

Colorado Springs, Colorado, 19th.

Cheyenne, Wyoming, 21st.

Grand Island, Neb., 22nd.
Sioux City, Iowa, 23rd and 24th.
Grand Opera House, Omaha, 25th, 26th, and 27th, including matinee.

That closes that season. We went to Chicago, and, as originally arranged, produced the "Irish Arab."

Q. When did you get the mechanical appliances for producing the railroad scene in "After Dark"—when did you first provide yourself with them?

A. When I first produced it.

Q. And how long did you continue to use the same appliances?

A. What do you mean by "appliances"?

Q. The engine and car and tracks—did you carry those with you as you travelled?

A. Yes; we used those right along.

Q. And you have not the same ones now?

A. Oh, no.

Q. Well, how long did you continue to use those you first provided yourself with?

501 A. I used them during the first season and a portion of the second. I was always tampering with the way of running the train.

Q. Then did you cause to be made new apparatus for that during the second season?

A. I believe during the second season—now, remember one thing: that I stopped travelling with the company during the second season, and I had a man with the company, and I directed from New York.

Mr. GERBER: I object to anything that occurred during his absence.

Q. Who kept this book that you have just examined?

A. I did. During that season I was the stage manager, treasurer, and leading man of the company.

Q. Have you produced any book relating to your second season?

A. Yes, sir.

Q. Which one?

A. This (handing book to counsel).

Q. Where was this book kept?

A. On the road, by the treasurer of the company.

Q. What is his name?

A. Elmer.

Q. He is the man who has been with the company since you left it?

A. Yes.

Q. Was there any book kept in the office here?

A. In New York?

Q. Yes.

A. No; simply a copy of this sent to me every week. I had nine companies. At the end of that year I had a stock of vouchers that

would probably fill half this room and most of them destroyed, but I had a copy of those sent me every week.

Q. And examined by you?

A. And examined by me; just an actual copy of this (referring to book), as you see it here.

502 Q. The copy sent to you you cannot now produce; that you think is lost?

A. That, I think, is lost—that is, to produce it. I think it would be almost next to impossible to produce it complete.

Q. Can you, from that book, state where the company was reported to you to be during each week?

A. Yes, sir.

Q. During that week?

A. Yes, sir.

Q. When did you see the company during that season—before it began?

A. Yes; I was with them the first three nights.

Q. Where were the performances then?

A. We opened at Newburgh on the 21st of August.

Q. And performed there for three nights?

A. No; one night.

Q. Where next?

A. Trenton, New Jersey, August 22.

Q. And where next?

A. Wilmington, Delaware, August 23 and 24. Then it went South, and I left.

Q. That company was known as an "After Dark" company, was it not?

A. Yes.

Q. And it was instructed by you to play "After Dark" and no other play; am I right?

A. That is correct.

Q. And provided with scenery and mechanical appliances for that play?

A. Yes.

Q. And you provided them with the same mechanical appliances for the railroad scene that you had used in the former season?

A. Yes; I believe I did.

Q. You were in continual correspondence with that company during the whole season?

A. Yes, sir.

503 Q. Who arranged the route for that company before it started?

A. Before it started, I did.

Q. How often were these returns like those contained in this book sent to you?

A. Once every week.

Q. Will you now state where that company was reported to you to perform "After Dark" and when?

Mr. GERBER: That is objected to as being hearsay, incompetent, and inadmissible.

Objection overruled. Exception.

By the REFEREE:

Q. That is the book you acted upon—you acted upon the reports made to you in that book?

A. I kept my accounts according to it.

WITNESS: Do you want me to go on with this book?

Mr. OLIN: Do as you did with the other, please.

A. Richmond, Va., Aug. 25 and 26.

Norfolk, Va., 27.

Lynchburg, Va., 28th.

Counsel for defendants states that he objects to this evidence upon the same grounds as stated in the former objection; that the evidence is simply hearsay and incompetent, and that the witness was not with the company, does not know where they performed, except as reported to him, and that the evidence calls for reports made to him by a third party.

The referee overrules the objection and defendants' counsel excepts.

504 Witness continuing: Roanoke, Virginia, 29th.

Mr. GERBER: Unless the witness can testify, Mr. Referee, of his own knowledge, or, after looking at that book, says his recollection is refreshed, and then says he can testify from recollection, I object to the evidence as being incompetent and immaterial.

Objection overruled. Exception.

Mr. GERBER: I ask leave to ask the witness one or two questions before he proceeds.

By Mr. GERBER:

Q. Mr. Brady, in the answers you are now giving to counsel's questions, are you testifying from your own knowledge as to places where these performances are claimed to have taken place?

A. I know that the company was routed and booked in those places, and that, to the best of my knowledge, they played there.

Q. Were you with the company?

A. No, sir.

Q. And without the assistance of the book that you now hold in your hand could you testify to the places where they performed or the times?

A. No, sir; unless I had got my original route list.

Q. Is that book which you hold in your hand in your handwriting?

A. No, sir.

Q. Was it in your possession during that season, the season of 1890 and 1891?

A. No, sir.

Mr. GERBER: I renew my objection.

By the REFEREE:

Q. Where is your original route list?
A. It is destroyed.

505 Objection overruled. Exception.

By Mr. OLIN:

Witness continuing:

Knoxville, 30th.
Chattanooga, September 1.
Atlanta, September 2 and 3, with a matinee.
Birmingham, Ala., 4th and 5th, with a matinee.
Columbus, Ga., 6th.
Augusta, Ga., 8th.
Charleston, South Carolina, 9th and 10th.
Savannah, Ga., 11th.
Mobile, Alabama, 13th.
The 12th was lost traveling, which explains the omission of one night.
New Orleans, at the Grand Opera House, 14th to 20th; two matinees.
Lake Charles, La., 21st.
Galveston, Texas, 22nd, 23rd.
Houston, Texas, 24th and 25th, with a matinee.
Austin, Texas, 26th.
San Antonio, Texas, August 27th.
San Antonio, August 28th, Sunday.
Taylor, Texas, 29th.
Waco, Texas, 30th.
Fort Worth, Texas, October 1 and 2.
Dallas, Texas, 3rd and 4th.
Tyler, Texas, 6th.
Shreveport, La., 7th and 8th.
Marshall, Texas, 9th.
506 Pine Bluff, 10th.
Hot Springs, Ark., 11th.
Little Rock, Ark., 12th.
Memphis, Tenn., at the Memphis theatre, October 13 to 18; one matinee.
Nashville, Tenn., Oct. 20, 21, & 22; one matinee; at the Theatre Vendome.
Bowling Green, Ken., 23rd.
Frankfort, Ken., 24.
Maysville, Ken., 25th.
Haviland's theatre, Cin., Oct. 26 to Nov. 1.
Pope's theatre, St. Louis, Nov. 2 to 8, with two matinees.
Windsor theatre, Chicago, Nov. 9 to Nov. 15; three matinees.
Valparaiso, Ind., 17.
Laporte, Ind., 18.
Elkhart, Ind., 19.
Grand Rapids, Mich., 20.

East Saginaw, Mich., 21.
Bay City, Mich., 22.
Whitney Opera House, Detroit, Nov. 24 to 29; three matinees.
Peru, Ind., Dec. 1.
Wabash, Ind., Dec. 2.
Defiance, Ohio, 3rd.
North Baltimore, 4th.
Fostoria, 5th.
Sandusky, Ohio, 6th.
Toledo, Ohio, Dec. 8th to 13th.
507 Columbus, Ohio, Sunday, the 14th.
English Opera House, 15, 16, & 17.
Terre Haute, Ind., 18th.
Lafayette, Ind., 19.
Anderson, Ind., 20th.
Harris' Bijou, Washington, D. C., Dec. 22 to 27.
Bijou theatre, Pittsburgh, Dec. 29 to Jan. 3.
Altoona, Penn., Jan. 5.
Lebanon, Penn., Jan. 6.
Reading, Penn., Jan. 7.
Allentown, Penn., Jan. 8.
Wilkes Barre, Penn., 9th.
Scranton, Penn., 10th.
Columbus theatre, Harlem, Jan. 12th to 17th; two matinees.
Academy of Music, Jersey City, Jan. 19th to 21st: two matinees.
Grand Opera House, Brooklyn, Jan. 26th to 31st; two matinees.
People's theatre, New York, Feb. 2nd to 7th; two matinees.
Gaiety theatre, Providence, Feb. 9th to 14th; three matinees.
National theatre, Philadelphia, 16th to 21st; three matinees.
Miner's theatre, Newark, Feb. 22nd to 27th.
People's theatre, Philadelphia, March 2nd to 7th.
Jacobs' theatre, Cleveland, 9th to 14th.
Jacobs' theatre, Toronto, Canada, 16th to 21st.
508 Jacobs' theatre, Montreal, Canada, 23rd to 28th.
14th Street theatre, New York, March 25th to April 3rd.
Lyceum theatre, Buffalo, April 5th to April 11th.
Albany theatre, Albany, N. Y., April 13, 14, and 15.
Utica, New York, 16.
Oswego, N. Y., 18.
Jacobs' theatre, Rochester, N. Y., 20th to 25th.
Jacobs' theatre, Paterson, N. J., 27, 28, & 29.
Jacobs' theatre, Hoboken, N. J., April 30th, May 1, and May 2.
Bonnell's theatre, New Haven, Conn., May 4, 5, & 6, with a matinee.
Meriden, Conn., 7th.
New Britain, Conn., 8th.
Bridgeport, Conn., 9th, with a matinee.

Q. When did your next season with "After Dark" begin?
A. (Referring to book.) August 13, Trenton, N. J.
Q. August of what year—1891?
A. August of 1891; yes, sir.

Q. Did you accompany that company at all?

A. Yes; once or twice.

Q. Where did you see them play?

A. I saw them play in Trenton, Atlantic City, and Philadelphia the first three nights. I saw them play a number of other times during the season.

Q. What book is that that you hold in your hand?

A. It is a book kept by the same gentleman who kept the season previous.

509 Q. Did you have copies of the statements in that book?

A. Yes, sir.

Q. Sent to you week by week?

A. Yes.

Q. Did you keep in communication with the company during the whole of that time?

A. Yes.

Q. Did you keep your accounts on the basis of those statements?

A. He sent me a copy of the statements.

Q. And you kept your accounts on that basis?

A. Yes.

Q. What has become of those original statements?

A. As I said before, I don't think I could find them, but I have made no effort to find them.

Q. Have you any doubt that the company performed at the places and times mentioned in that book?

Mr. GERBER: That is objected to as immaterial and incompetent. Objection sustained. Exception.

Q. When you look at that book is your memory refreshed so that you can tell where the company was at different times—where it was reported to you to be?

A. Yes; because it must be correct. This book must be correct.

Q. Will you look at that book and state the places and times when that company during that season was reported to you to have performed "After Dark"?

Mr. GERBER: That is objected to upon the ground that it is incompetent, inadmissible, and hearsay, not the best evidence, and I ask leave of the referee to ask the witness a few questions.

By the REFEREE:

Q. These are the books produced by you today?

A. Yes.

510 Q. They are the books upon which you acted with that company—they are the books upon which you kept your actions with that company?

A. These were the books by which I knew how I stood. I know how much money was coming to me by these books.

Q. Did you keep your route by them?

A. No; because the man who kept these books had nothing to do with the route. I knew how much money was coming to me by these books.

Q. Now, money came to you according to the record of those books, according to the time and place shown there?

A. This book has nothing to do with the times and places; it has nothing to do with the keeping of that record.

By Mr. OLIN:

Q. It is a mere cash account, isn't it—this book?

A. Yes.

Q. But it shows where the company was performing from time to time?

A. Yes.

By the REFEREE:

Q. From that book can you state where the company was performing?

A. I could state without these accounts.

By Mr. GERBER:

Q. Mr. Brady, is the book which was handed to you by counsel and which you produced at this session in your handwriting?

A. No, sir.

Q. Was it in your possession during the season of 1891–'92, beginning August 15, 1891?

A. No, sir.

Q. When did it come into your possession?

A. At the end of the season.

Q. These statements which were weekly sent to you, did they purport to be copies taken from this book?

511 A. Yes, sir.

Q. By whom was this book kept?

A. By Mr. Elmer.

Q. And who is Mr. Elmer?

A. The treasurer and manager of the company—the acting manager.

Q. Then, as I understand you, the entries in this book were made by Mr. Elmer and copies sent weekly to you?

A. Yes, sir.

Q. And those copies you say you are unable to produce?

A. I am unable to produce.

Q. Well, you have not produced them.

A. I have not produced them. This is the easiest way of getting at the accounts of the company.

Q. Could you state, of your own knowledge, without the assistance of this book, where the company performed after August 15, 1891?

A. From memory?

Q. Yes.

A. No, sir.

Q. Would your recollection be refreshed so that you could testify from memory if you simply looked at this book and then laid it aside?

A. You mean glance at one of the pages and then tell?
Q. Glance right through the whole book.
A. No, sir.
Q. Could you state, after looking through this book, where the company performed, without having the book before you to assist you in your statements?
A. Could I state without looking through it after?
Q. No; after looking through that book?
A. I could give a general statement of where they performed, but not a precise one.

By Mr. OLIN:

512 Q. On looking at that book, can you so refresh your memory that you can give a precise statement?
A. You mean looking at that page?

By the REFEREE:

Q. Yes; loooking at a page and then refreshing your memory. Can you say where they were?
A. I can say where this book says they were. In other words, I wouldn't swear to the correctness of these books as far as the route is concerned.

By Mr. OLIN:

Q. Can you tell, generally, by looking through that book how many performances of "After Dark" the company gave during that season?
A. Yes.
Q. State the number of performances of "After Dark" during that season that were reported to you.

Mr. GERBER: I object to it as incompetent, hearsay, and simply the result of a report given by somebody else.

By the REFEREE:

Q. Does that book contain a report of the plays of "After Dark," upon which you acted as manager of that company?
A. Mr. Ward, you must define what you mean by "acted." All I kept this book for was to find out how much money was coming to me. I didn't keep it for the route; I kept another arrangement for that. This man may have made a mistake, as I find he made in this other book.
Q. Then from your best recollection, after refreshing your memory from the book, whenever it is at fault, state where the company was.
A. Yes, sir.
Q. Can you testify as to any of the places where they
513 played without the assistance of the book?
A. No; I can give a general idea of what they did during that season.
Q. Well, give it.
A. Well, they played 26 weeks.

By Mr. OLIN:

Q. Where?

A. Throughout the United States.

Q. Can you give the places where they played from your memory, unassisted by the books?

A. Yes, sir.

Q. Give them—the places, as far as you remember.

A. Trenton, Atlantic City, Philadelphia, Boston, Baltimore, Lynn, Lowell, Lawrence, Salem, Manchester, Nashua, Concord, Lewiston, Bangor, Portland, Biddeford, Portsmouth, Haverhill, Springfield, Worcester, Brocton, Fall River, Newport, Brooklyn, and Philadelphia.

Q. Where did they play in Brooklyn?

A. At the Grand Opera House.

Q. And in Philadelphia?

A. The People's theatre. Pittsburgh, Chicago, Detroit, Cincinnati, Indianapolis, Dayton, Columbus, St. Louis, Kansas City, St. Joe, Omaha, Council Bluffs, Sioux City, Mantaka, St. Paul, Minneapolis, Milwaukee, Chicago, at Haviland's; Chicago, at the Windsor; Joliet, Streator, Elgin, Pullman, Zanesville, Wheeling, Beaver Falls, Meadville, Bradford, Franklin, Erie, Hornersville, Elmira, Binghamton, and Port Jervis.

Q. That was the season of 1891–1892 that you are talking about?

A. Yes.

Q. Now, in the season of 1890–'91 you say that you saw three performances and in the season of 1891–'92 you saw the first three performances, and then saw a number of others afterwards?

514 A. I didn't say I saw a number of performances; if I did I should say I saw the first three performances and then left the company, but I did see other performances.

Q. The season of 1892—you saw the first three performances?

A. Yes, sir.

Q. On these occasions, when you saw the company perform on those two seasons, was the railroad scene performed substantially as it was at the Grand Opera House here—substantially as it was after Judge Wallace's decision?

A. What do you mean by "substantially"?

Q. About the same.

A. Well, about the same in what way?

Q. Well, I think you can answer that question.

A. Substantially, you know—I must know what you mean by "substantially."

Q. Was it intended to be performed in the same way it was at the Grand Opera House after Judge Wallace's decision?

A. Intended to be performed in the same way as it was *as* at the Grand Opera House?

Q. Yes.

A. You mean to work up the rescue of the character?

Q. Yes. Was the scenery substantially the same?

Mr. GERBER: I object to that question I think a proper ques-

tion would be to ask him how that scene was performed when he saw it.

Mr. OLIN: I will let him point out afterwards what the differences were.

Mr. GERBER: I insist upon the objection.

No ruling and question unanswered.

Q. Did you notice any differences between the scene as performed at the Grand Opera House after Judge Wallace's decision and as performed on these several occasions in the seasons of 1890 and 1891–'92 when you saw it?

A. Yes.

Q. What were the differences?

A. The railroad train was run in a different way.

515 Q. How?

A. It was run in an entirely different way from the way it was run at the Grand Opera House.

Q. In what respect?

A. Well, it was run on a wire 150 feet long.

Q. Was there any other difference?

A. As to the scene or as to the action in the scene?

Q. As to either.

A. The action in the scene was the same.

Q. Now, as to the scene, was there any difference?

A. Do you mean as to the scenic effect?

Q. Yes.

A. The scenic effect was entirely different in the Grand Opera House. We used a flat and afterwards we used a drop. At the Grand Opera House we used Mr. Denham's arrangement of the mode of crossing a railroad train over the stage, and when I saw it in those seasons you mention we had a new arrangement of crossing the railroad over the stage.

Q. When did your season of 1892–'93 begin?

A. The present season.

Q. For the season of 1892–'93 that is?

A. Yes.

Q. And that company performed "After Dark" until the decision of the court of appeals?

A. It is performing "After Dark" yet.

Q. But you said you made a change in the railroad scene after the decision in the court of appeals?

A. No, sir. In the action of the railroad scene; yes.

Q. Where is the defendant Webster?

A. The defendant Webster is with the "Bottom of the Sea" company.

516 Q. Are you interested in that?

A. As I told you at the last examination, I received a percentage to book the company.

Q. And he has no interest in the "After Dark" company?

A. No, sir.

Q. When did his interest in the "After Dark" company cease?

A. He never had any interest in the "After Dark" company.

Q. In the season of 1889–'90 what terms did you make with these theatres at which you performed, whether sharing terms, or did you pay so much a night at a theatre?

A. We always made sharing terms; that is the custom.

Q. Is that true of the season of 1890, '91, and '92?

A. I would like to explain myself, as you have asked me that question.

Q. Give any explanation you wish.

A. Well, the custom in the theatrical business is to play on sharing terms; in fact, I never rent unless I play in a local town where there is no local management.

Q. So that you can say generally as to at least all the large towns in which your company performed you were on sharing terms?

A. Yes, sir.

Further hearing is adjourned until Saturday, December 3, 1892, at 11 o'clock a. m.

517 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and Others. } Before Hon. John E. Ward, Referee.

NEW YORK, *December* 3, 1892.

Present: The referee and counsel, as before.

WILLIAM A. BRADY further testifies as follows:

Direct examination resumed by Mr. OLIN:

Q. Mr. Brady, will you produce the book of the play "After Dark," which you have testified was used by you in giving the performances already mentioned in your testimony?

Counsel for defendants states that he objects to the witness producing any manuscript of the play, upon the grounds that it is immaterial and incompetent on this reference, and that under the decree entered the referee has no power to call upon the defendants to produce evidence against themselves, and that the decree in speaking of "books and papers" to be produced does not include the manuscript of the play or any material excepting such books and papers as were kept in the conduct of his business and having reference to the receipts—in other words, books of account, etc.

Counsel further states that if the referee directs the production of the manuscript he wishes to note an exception, so as to preserve his rights, and would instruct the witness to produce the same.

518 The referee decides that under the order of reference it is his opinion that the book called for should be produced at this reference.

Defendants' counsel excepts to the ruling and decision of the referee.

Cross-examination by Mr. GERBER:

Q. Mr. Brady, as I understand you, all the performances which you have testified to as having been given at Miner's theatre were subsequent to the decision rendered by Judge Wallace and before the decision of the court of appeals. Was that so?

A. Yes, sir.

Q. On page 8 of your testimony you state that several times since the decision of Judge Wallace you tried railroad scenes, and that you have been tinkering with the piece for the purpose of altering it here and there and tried a number of other arrangements. Now, limiting yourself to the original scene, do you mean that since the decision of Judge Wallace you tried other railroad scenes?

A. The original railroad arrangement, as used in "After Dark" by Dion Boucicault and in "Under the Gaslight" by Augustin Daly, is a telescopic arrangement which opens on one side and closes on the other, could not be used successfully in performing, and later-day stage mechanics have invented a new arrangement for crossing the train over the stage and which was being improved upon constantly, and I took hold of that invention, and during the two years I have testified to changed that portion of the scene the number of times I spoke about. The changes in the scene were entirely caused by an attempt to perfect the crossing of the train. The whole thing was
519 mechanical. No alteration was made in the dramatical action of the scene.

Q. Now, as I understand you, you were not with the company after the first season of After Dark, personally?

A. Not as a travelling member of the company. I used to visit it once in a while.

Q. How many performances of the play did you personally witness after the first season that you have testified to?

A. About ten performances the second season and between 15 and 20 performances the third season.

Q. Now, am I correct in my understanding of your testimony that the books which you produced at the last hearing were original books of entry kept by the person who travelled with and who had charge of the company—the "After Dark company"—and that from those books a copy of a statement was weekly sent to you, apprising you of the business done during the week preceding the statement?

A. Yes, sir.

Further hearing is adjourned until Friday, December 16, 1892, at two o'clock p. m.

520 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER & O'RS. } Before Hon. John E. Ward, Referee.

NEW YORK, *December* 16, 1892.

Present: The referee and counsel as before.

Mr. Gerber produces a book containing the manuscript of the play of After Dark, called for at the last session.

Marked "For identification, Complainant's Exhibit No. 1, December 16, 1892, G. A. H."

Mr. OLIN: I offer in evidence act 4, scene 2nd.

Mr. GERBER: Objected to upon the ground that it is a book or manuscript of the defendants produced pursuant to subpœna and under compulsion by order of the court, and that neither the defendant nor his books can be used against him in any proceeding wherein it is sought to obtain a penalty or for the purpose of this hearing, and that it is incompetent.

Objection overruled. Exception.

Act 4, scene 2nd, is as follows:

CHANGE OF SCENE.

SCENE 2.

(Enter R.) Oh! They have broken every bone in my body. And to think of my letting that villain Knatchbull to escape
521 just as I had him in my grasp. And Chumley—my friend—they'll kill him, they will—I know they will. I am sure they will. What place have they thrown me into? A cellar? Are *no* they no means of escape from here? (Whistle cue.) I hear the sound of machinery. The rumble of a railroad train. Why, I am in a cellar adjoining the underground railway. Hark, I hear voices. Persons speaking in the cellar adjoining this. Are there no means of escape from here? Is there no egress? Ah! what's here? A door—a key-hole. Hark! I hear voices—Morris and Bellingham. They are carrying a man between them. He appears to be insensible. It's Chumley! Hush! they are speaking again. Morris asks if the hole is large enough. Bellingham replies, Yes. They are lowering him down a hole or a well. They are bricking up the hole again. They have gone and left the poor devil to his fate. And Chumley—my friend—the man who stood by me when all the rest of the world turned against me, and I within a few feet of him and cannot save him. Yes, I must—I shall—I will! But how? Ah! what's here? An iron bar. This may prove useful. It is wedged against the wall and I cannot move it, and every moment may be precious. Ah! my strength fails me. Come, Frank, brace up—one trial more. (*Bus.*) With this iron bar I'll break through this hole or I'll die in the attempt. Now, then, Frank Dalton, this is the chance you have prayed for. To work, man, to work. (Exit.)

522 CHANGE OF SCENE.

It's Chumley. I can see his pale face upturned on the track. Chumley! Chumley! My friend! don't you hear me? (*Bus.*) The train—the train. It's coming nearer and nearer. He'll be dashed to pieces and killed. I'm coming, my friend. I'll save you—I'll save!

Further hearing is adjourned until Wednesday, December 28, 1892, at 2 o'clock p. m.

United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER & O'rs. } Before Hon. John E. Ward, Referee.

NEW YORK, *December* 28, 1892.

Present: The referee, Mr. Gerber, and Mr. Olin, by counsel.

Mr. Olin being engaged in court, an adjournment is asked for.

Further hearing is adjourned until Friday, December 30, 1892, at 11 o'clock a. m.

523 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER & O'rs. } Before Hon. John E. Ward, Referee.

NEW YORK, *December* 30, 1892.

Present: The referee, Mr. Gerber, and Mr. Olin, by counsel.

Complainant rests.
Respondents rest.
Testimony closed.

(Endorsed:) U. S. circuit court. Filed Jan. 17, 1893. John A. Shields, clerk.

524 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

I, John E. Ward, one of the masters of this court, residing in the city of New York, to whom by an order, judgment, and decree made and entered in this court on the 5th day of November, 1892, this case was referred "to ascertain, take, state, and report to this court an account of the number of times the said railway scene

was used and produced by said defendants without the sanction and authority of said complainant in said dramatic composition entitled 'After Dark,' and where each and every of such unauthorized performances and productions took place and the terms and agreements under which said unauthorized performances took place," respectfully report to this court—

I. That in compliance with the order, judgment, and decree of this court the complainant has caused the defendant William A. Brady, impleaded therein with George P. Webster, to appear
525 before the said master for examination, and that he has been examined and his testimony reduced to writing, and is herewith submitted to the court; that he also produced the books, vouchers, and other documents required by the complainant to be produced at the aforesaid hearings, and that the said William A. Brady attended before me from time to time as he was directed.

II. I have ascertained and taken the number of times the said railway scene was used and produced by the said defendants without the sanction and authority of the said complainant in said dramatic composition entitled "After Dark," and I respectfully report that the number of times the said railway scene was so used and produced was (747) seven hundred and forty-seven.

III. I further respectfully report that the dramatic composition entitled "After Dark" was played at the places and times as follows:

1889.

Bridgeport, Connecticut, August 12th and 13th.
Hartford, 14th and 15th.
Lynn, Massachusetts, 16th and 17th.
Boston, August 19th to 24th.
Baltimore, August 26th to 31st.
Washington, Harris' theatre, September 2nd to 7th.
Richmond, Virginia, August 9th, 10th, and 11th, Mozart Academy.
Lynchburg, 12th, opera house.
Knoxville, 13th and 14th, opera house.
Chattanooga, Tennessee, September 16th and 17th, opera house.
Atlanta, 18th and 19th.
526 Athens, Georgia, 20th.
Augusta, Georgia, 21st.
Charleston, South Carolina, 23rd and 24th.
Savannah, Ga., 25th and 26th.
Macon, Ga., 27th and 28th.
Columbus, Ga., 30th.
Birmingham, Alabama, October 1st and 2nd.
Selma, Alabama, October 3rd.
Mobile, Alabama, 4th and 5th.
New Orleans, La., October 6th to 12th.
New Iberia, La., 13th.
Galveston, Texas, 14th and 15th.
Houston, Texas, 16th and 17th.
San Antonio, Texas, 19th and 20th.
Austin, Texas, 21st and 22nd.

Waco, 22nd.
Fort Worth, Texas, 23rd.
Dallas, Texas, 24th, 25th, and 26th.
Memphis, October 28th, 29th, 30th, 31st, and November 1st, and matinee on 2nd.
Louisville, November 4th to 9th; three matinees.
St. Louis, November 10th to 16th; three matinees.
Evansville, Ind., 17th.
Terre Haute, Ind., 18th.
Fort Wayne, 19th and 20th.
Kalamazoo, Mich., 21st.
Jackson, Mich., 22nd.
Elgin, Ill., 23rd.
527 Chicago, November 24th to 30th; three matinees.
Milwaukee, December 1st.
Lima, Ohio, December 2nd.
Findlay, Ohio, 3rd.
Piqua, Ohio, 4th.
Sandusky, Ohio, 5th.
Youngstown, Ohio, 6th.
Beaver Falls, 7th.
Meadville, December 9th.
Franklin, Penn., 10th.
Erie, Penn., 11th.
Bradford, Penn., 12th.
Newburgh, New York, 13th.
Birmingham, Conn., 14th.
New York, December 16th to 21st, Grand Opera House; two matinees.
Harlem, December 23rd to 28th, Theatre Comique; two matinees.
Pittsburgh, December 30th to January 4th; two matinees.
New York, January 6th to 11th, People's theatre; two matinees.
New Haven, January 13th.
Bridgeport, January 14th and 15th.
Newport, R. I., 16th.
Fall River, Academy of Music, January 17th and 18th, & matinee.
Grand Opera House, Brooklyn, January 20th to 25th; two matinees.
Wilkes Barre, Penn., January 27th.
Trenton, New Jersey, January 28th and 29th.
Allentown, Penn., January 30th.
Reading, Penn., January 31st.
528 Easton, Penn., February 1st.
Philadelphia, February 3rd to 8th; two matinees.
Hartford, Conn., February 10th.
Meriden, 11.
Holyoke, Mass., 12th.
Springfield, Mass., 13th.
Lynn, Mass., 14th and 15th; one matinee.
Boston, February 17th to 22nd; three matinees.

Providence, February 24th to 29th; three matinees.
Morristown, Penn., March 3rd.
Wilmington, Del., 4th and 5th.
Lancaster, 6th.
Pottstown, 7th.
Mauch Chunk, 8th.
Williamsburgh, or Brooklyn, E. D., March 10th to 15th.
Jersey City, March 17th to 22nd; three matinees.
Paterson, New Jersey, 24th, 25th, and 26th; one matinee.
Hoboken, 27th, 28th, 29th, and 30th; two matinees.
Chicago, Haviland's theatre, April 6th to 12th; three matinees.
Minneapolis, Bijou theatre, April 13th to 19th; two matinees.
St. Paul, April 20th to 23rd; two matinees.
Duluth, Minn., 24th to 25th, with one matinee.
Brainerd, Minn., April 28th.
Fargo, Dakota, 29th.
Grand Forks, North Dakota, 30th.
Fargo, North Dakota, May 5th.
Bismarck, Dakota, 6th.
Glendive, Montana, 7th.
529 Miles City, Montana, 8th.
Bozeman, Montana, 9th.
Marysville, Montana, 10th.
Helena, Montana, 11th.
Butte City, Montana, 12th, 13th, and 14th.
Missoula, Montana, 15th.
Spokane, Washington, 16th and 17th.
Seattle, Washington, May 19th and 20th.
Port Townsend, Washington, May 21st.
Canada, May 22nd, in Victoria, B. C.; no charge for these performances.
Tacoma, Washington, 23rd and 24th.
Portland, Oregon, 25th, 26th, and 27th.
Astoria, Oregon, 28th and 29th.
San Francisco, June 2nd to 8th; one matinee at the Alcazar theatre.
San José, Cal., June 23rd.
San José, June 24th.
Napa, 25th.
Woodland, Cal., 26th.
Sacramento, 27th and 28th.
Virginia City, Nevada, 29th.
Carson City, Nevada, 30th.
Reno, Nevada, 1st.
Park City, Utah, July 3rd.
Salt Lake City, Utah, July 4th and 5th; one matinee.
Denver, July 7th to 12th.
Aspen, Col., July 14th.
Leadville, Col., 15th and 16th.
530 Salida, Col., 17th.
Pueblo, Col., 18th.

Colorado Springs, Colorado, 19th.
Cheyenne, Wyoming, 21st.
Grand Island, Neb., 22nd.
Sioux City, Iowa, 23rd and 24th.
Omaha, 25th, 26th, and 27th; one matinee.
Newburgh, August 21st.
Trenton, New Jersey, August 22nd.
Wilmington, Delaware, August 23rd and 24th.
Richmond, Va., August 25th and 26th.
Norfolk, Va., 27th.
Lynchburgh, Va., 28th.
Roanoke, Virginia, 29th.
Knoxville, 30th.
Chattanooga, September 1st.
Atlanta, September 2nd and 3rd; one matinee.
Birmingham, Ala., 4th and 5th; one matinee.
Columbus, Ga., 6th.
Augusta, Ga., 8th.
Charleston, South Carolina, 9th and 10th.
Savannah, Ga., 11th.
Mobile, Alabama, 13th.
New Orleans, Grand Opera House, 14th to 20th; two matinees.
Lake Charles, La., 21st.
Galveston, Texas, 22nd and 23rd.
Houston, Texas, 24th and 25th; one matinee.
Austin, Texas, 26th.
531 San Antonio, Texas, August 27th.
San Antonio, August 28th, Sunday.
Taylor, Texas, 29th.
Waco, Texas, 30th.
Fort Worth, Texas, October 1st and 2nd.
Dallas, Texas, 3rd and 4th.
Tyler, Texas, 6th.
Shreveport, La., 7th and 8th.
Marshall, Texas, 9th.
Pine Bluff, 10th.
Hot Springs, Ark., 11th.
Little Rock, Ark., 12th.
Memphis, Tenn., Memphis theatre, October 13th to 18th; one matinee.
Nashville, Tenn., October 20th, 21st, and 22nd; one matinee at the Theatre Vendome.
Bowling Green, Ken., 23rd.
Frankfort, Ken., 24th.
Maysville, Ken., 25th.
Haviland's theatre, Cin., October 26th to November 1st.
St. Louis, November 2nd to 8th, with two matinees; Pope's theatre.
Chicago, November 9th to November 15th; three matinees; Windsor theatre.
Valparaiso, Ind., 17th.

Laporte, Ind., 18th
Elkhart, Ind., 19th.
Grand Rapids, Mich., 20th.
West Saginaw, Mich., 21st.
532 Bay City, Mich., 22nd.
Whitney Opera House, Detroit, November 24th to 29th; three matinees.
Peru, Ind., December 1st.
Wabash, Ind., December 2nd.
Defiance, Ohio, 3rd.
North Baltimore, 4th.
Fostoria, 5th.
Sandusky, Ohio, 6th.
Toledo, Ohio, December 8th to 13th.
Columbus, Ohio, Sunday, the 14th.
English Opera House, 15, 16, & 17.
Terre Haute, Ind., 18th.
Lafayette, Ind., 19th.
Anderson, Ind., 20th.
Harris' Bijou, Washington, D. C., December 22nd to 27th.
Bijou theatre, Pittsburgh, December 29th to January 3rd.
Altoona, Penn., January 5th.
Lebanon, Penn., Jan. 6th.
Reading, Penn., January 7th.
Allentown, Penn., January 8th.
Wilkes Barre, Penn., 9th.
Scranton, Penn., 10th.
Harlem, Jan. 12th to 17th; two matinees; Columbus theatre.
Jersey City, January 19th to 21st; two matinees; Academy of Music.
Brooklyn, January 26th to 31st; two matinees; Grand Opera House.
533 New York, February 2nd to 7th, two matinees; People's theatre.
Gaiety theatre, Providence, February 9th to 14th; three matinees.
National theatre, Philadelphia, 16th to 21st; three matinees.
Miner's theatre, Newark, February 22nd to 27th.
People's theatre, Philadelphia, March 2nd to 7th.
Jacobs' theatre, Cleveland, 9th to 14th.
Jacobs' theatre, Toronto, Canada, 16th to 21st. } No charge for these performances.
Jacobs' theatre, Montreal, Canada, 23rd to 28th. }
14th Street theatre, New York, March 25th to April 3rd.
Lyceum theatre, Buffalo, April 5th to April 11th.
Albany theatre, Albany, N. Y., April 13, 14, and 15.
Utica, New York, 16th.
Oswego, N. Y., 18th.
Jacobs' theatre, Rochester, N. Y., 20th to 25th.
Jacobs' theatre, Paterson, N. J., 27th, 28th, and 29th.
Jacobs' theatre, Hoboken, N. J., April 30th, May 1, and May 2.

Bonnell's theatre, New Haven, Conn., May 4th, 5th, & 6th, with a matinee.
Meriden, Conn., 7th.
New Britain, Conn., 8th.
Bridgeport, Conn., 9th, with a matinee.

1891.

Trenton, N. J., August 13th.
Numbering in all 591 performances.
Trenton, Atlantic City, Philadelphia, Boston, Baltimore, Lynn,
Lowell, Lawrence, Salem, Manchester, Nashua, Concord,
534 Lewiston, Bangor, Portland, Biddeford, Portsmouth, Haverhill, Springfield, Worcester, Brockton, Fall River, Newport, Brooklyn, and Philadelphia, Pittsburgh, Chicago, Detroit, Cincinnati, Indianapolis, Dayton, Columbus, St. Louis, Kansas City, St. Joe, Omaha, Council Bluffs, Sioux City, Mankato, St. Paul, Minneapolis, Milwaukee, Chicago, at Haviland's; Chicago, at the Windsor; Joliet, Streator, Elgin, Pullman, Zanesville, Wheeling, Beaver Falls, Meadville, Bradford, Franklin, Erie, Hornellsville, Elmira, Binghampton, and Port Jervis.

I find that at the above-named places the play was performed for 26 consecutive weeks. I find that an average performance of 6 performances each week would amount to 156 performances, which I have added to the performances at the places hereinbefore stated, which amount to 591 performances. These performances together make the number of 747 performances, as hereinabove stated by me.

IV. I further respectfully report that said unauthorized performances took place on sharing terms.

All of which is respectfully submitted.

JOHN E. WARD, *Master.*

January 10th, 1893.

(Endorsed:) United States circuit court, southern district of New York. Augustin Daly, complainant, against George P. Webster and William A. Brady, impleaded, etc., defendants. Master's report. U. S. circuit court. Filed Jan. 17, 1893. John A. Shields, clerk.

535 United States Circuit Court.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, &c., Defendants.

The defendants above named respectfully request the master to make and find the following findings:

I. That the production of the railroad scene in the play "After Dark" at the Grand Opera House in New York city was different from its production at the theatre of the defendant Miner, and at said Grand Opera House was the first production after the decision of Hon. William J. Wallace, circuit judge. (See page 6 of testimony.)

II. That the production of the railroad scene in "After Dark" at the Grand Opera House was different *than* its production at the National theatre, Philadelphia. (See page 6 of testimony.)

III. That the defendants played the railroad scene in "After Dark" in manner complained of by complainants after the decision of the Hon. William J. Wallace holding that the complainant's copyright was invalid and ceased performing the scene as soon as the circuit court of appeals reversed the decision of Judge Wallace. (See pages 6, 7, 8, and 48.)

IV. That all the performances of the railroad scene in
536 "After Dark" claimed by the complainants to have been an imitation of the railroad scene in "Under the Gaslight" took place during the period intermediate the decision of Judge Wallace holding the complainant's copyright to have been invalid and the decision of the circuit court of appeals reversing the decree dismissing the bill.

V. That during the theatrical season commencing August 21st, 1890, the only competent evidence produced establishes the giving of three performances of the play "After Dark" with the railroad scene given in manner complained of by the complainants.

VI. That there was no competent evidence produced of the use by defendants of the said railroad scene in violation of complainant's copyright at any time during the theatrical season commencing August 21st, 1890, excepting three performances. (See pages 27, 28, 29.)

VII. That the only competent evidence of the use of the railroad scene in "After Dark" in a manner complained of by the complainants during the theatrical season commencing August 31st, 1891, was its use during three performances.

VIII. That the only competent proof presented of the use of the railroad scene in "After Dark" by the defendants in any manner complained of by the complainants as violative of *their* copyright during the theatrical season commencing August 13th, 1891, was its use during three performances.

IX. That there is no proof of the use of the railroad scene by the defendants in "After Dark" in violation of plaintiff's copyright during the theatrical season of 1892–'93.

537 X. That no evidence has been presented showing any damage sustained by complainants by reason of the use by defendants of the railroad scene in "After Dark" complained of by the complainants.

XI. That no evidence has been presented of any profits made by the defendants by reason of the use by them of the railroad scene in the play "After Dark."

The master respectfully refuses to make the findings hereinbefore asked for upon the ground that he is not authorized to examine and find upon the questions therein submitted to him, or any of them, by the order, judgment, and decree of this court made on the 5th day of November, 1892.

JOHN E. WARD, *Master.*

Jan'y 10, 1893.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded, &c. Def'ts' requests to find. Dittenhoefer & Gerber, attorneys for defendants, 96 Broadway, New York. To John E. Ward, Esq., 69 Wall St. U. S. circuit court. Filed Jan. 17, 1893. John A. Shields, clerk.

538 United States Circuit Court.

AUGUSTIN DALY
against
GEORGE P. WEBSTER & WILLIAM A. BRADY, Impleaded, &c.

The defendants above named hereby except to the report of John E. Ward, one of the masters of this court, filed herein on the 17th day of January, 1893.

I. They except to the finding and report of the said master to the effect that the defendants, without the sanction and authority of the complainants performed the railroad scene in the dramatic composition entitled "After Dark," and that the said performances were unauthorized for the reason that the only proof presented before the master of any alleged performances given by the defendants of a railroad scene in "After Dark" was such evidence as the defendant William A. Brady was compelled to give under the compulsion of the subpœna issued at the request of the complainant, compelling him, without his consent, to attend before the master and give his evidence and produce his books, which were produced, as reported by the master, and that the defendant cannot be compelled against his consent to give evidence, either by himself or through his books, in any proceeding by means of which he is sought to be charged with a penalty or forfeiture or in which compulsory
539 evidence is used as a basis for the imposition of a penalty or forfeiture upon the witness.

II. The said defendants further except to the report and finding of the said master to the effect that certain unauthorized performances were given by the defendants of the railroad scene in a dramatic composition entitled "After Dark," inasmuch as it appears from the evidence before the master and the record in this suit that the performances of the railroad scene in the said production "After Dark" by the defendants, which are claimed by the complainant to have been a violation or infringement upon his copyright, were given after the decision by Hon. William J. Wallace, one of the judges of this court, to the effect that the plaintiff's copyright was invalid and after the dismissal of the complainant's bill of complaint upon the merits, and that no performance was given by the defendants of the said railroad scene which is claimed to be a violation of complainant's copyright after the decision of the circuit court of appeals in this suit.

III. The defendants further except to the said report and finding of the master and to that portion of the report and finding as specifies the number of performances given by the defendants and claimed to have been unauthorized and violative of the copyright of the

complainant for the reason that the evidence produced before the master does not justify or sustain such finding, and that no competent or primary evidence was presented before the master upon which he can find or conclude that the defendants gave the
540 performances or the number of performances stated by the said master in his second finding, to wit, 747 performances.

IV. They except to the finding and report of the said master as to the number of performances reported by him to have been given by the defendants of the railroad scene as being unsupported by the testimony.

V. They except to the finding and report of the master that the performances given at the places hereinafter named of the railroad scene in the play "After Dark" numbered 156 performances as being unsupported by the testimony, to wit, at Atlantic City, Philadelphia, Boston, Baltimore, Lynn, Lowell, Lawrence, Salem, Manchester, Nashua, Concord, Lewiston, Bangor, Portland, Biddeford, Portsmouth, Haverhill, Springfield, Worcester, Brocton, Fall River, Newport, Brooklyn, and Philadelphia, Pittsburg, Chicago, Detroit, Cincinnati, Indianapolis, Dayton, Columbus, St. Louis, Kansas City, St. Joe, Omaha, Council Bluffs, Sioux City, Mankato, St. Paul, Minneapolis, Milwaukee, Chicago, at Haviland's; Chicago, at Windsor; Joliet, Streator, Elgin, Pullman, Zanesville, Wheeling, Beaver Falls, Meadville, Bradford, Franklin, Erie, Hornellsville, Elmira, Binghamton, and Port Jervis.

VI. They except to the finding and report of the master that the defendants gave 591 performances of the railroad scene in "After Dark" at places other than those mentioned in the foregoing exception in violation of plaintiff's copyright for the reason that such finding is unsupported by the testimony.

541 VII. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That the production of the railroad scene in the play "After Dark" at the Grand Opera House in New York city was different from its production at the theatre of the defendant Miner, and at said Grand Opera House it was the first production after the decision of Hon. William J. Wallace, circuit judge.

VIII. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That the production of the railroad scene in "After Dark" at the Grand Opera House was different than its production at the National theatre, Philadelphia.

IX. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That the defendants played the railroad scene in "After Dark" in manner complained of by complainants after the decision of the Hon. William J. Wallace holding that the complainant's copyright was invalid, and ceased performing the scene as soon as the circuit court of appeals reversed the decision of Judge Wallace.

X. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That all the performances of the railroad scene in "After Dark" claimed by the

complainants to have been an imitation of the railroad scene in "Under the Gaslight" took place during the period intermediate the decision of Judge Wallace holding the complainant's
542 copyright to have been invalid and the decision of the circuit court of appeals reversing the decree dismissing the bill.

XI. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That during the theatrical season commencing August 21st, 1890, the only competent evidence produced established the giving of three performances of the play "After Dark" with the railroad scene given in manner complained of by the complainant.

XII. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That there was no competent evidence produced of the use by defendants of the said railroad scene in violation of complainant's copyright at any time during the theatrical season commencing August 21st, 1890, excepting three performances.

XIII. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That the only competent evidence of the use of the railroad scene in "After Dark" in a manner complained of by the complainant during the theatrical season commencing August 31st, 1891, was its use during three performances.

XIV. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That the only competent proof presented of the use of the railroad scene in "After Dark" by the defendants in any manner complained
543 of by the complainants as violative of *their* copyright during the theatrical season commencing August 13th, 1891, was its use during three performances.

XV. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That there is no proof of the use of the railroad scene by the defendants in "After Dark" in violation of plaintiff's copyright during the theatrical season of 1892–'93.

XVI. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That no evidence has been presented showing any damage sustained by complainant by reason of the use by defendants of the railroad scene in "After Dark" complained of by the complainants.

XVII. They except to the refusal of the master to make and find the following finding requested of him by the defendants: That no evidence has been presented of any profits made by the defendants by reason of the use by them of the railroad scene in the play "After Dark."

DITTENHOEFER & GERBER,
Attorneys for the Defendants, 96 Broadway, N. Y. City.

(Endorsed:) United States circuit court. Augustin Daly against George P. Webster & William A. Brady, impleaded, &c. Exceptions to master's report. Dittenhoefer & Gerber, attorneys for defend-

ants, 96 Broadway, New York. U. S. circuit court. Filed Jan. 25, 1893. John A. Shields, clerk.

544 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the court house, in the city of New York, on the 1st day of April, 1893.

Present: Hon. E. Henry Lacombe, circuit judge.

AUGUSTIN DALY, Complainant,
against
WILLIAM A. BRADY and GEORGE P. WEBSTER, Impleaded, etc., Defendants.

This cause having come on to be heard upon the report of John E. Ward, Esq., one of the masters of this court, to whom it was referred to ascertain, take, state, and report to the court an account of the number of times the railway scene mentioned and described in the interlocutory decree entered herein on the 5th of November, 1891, was used and produced by said defendants without the sanction and authority of said complainant in said dramatic composition entitled "After Dark," and where each and every of such unauthorized performance and production took place, and the terms and agreements under which said unauthorized performance took place, which report bears date the 10th day of January, 1893, and upon reading said report filed the 17th day of January, 1893, and the defendants' objections thereto filed the 26th day of January, 1893, and the said cause having been argued by counsel and due deliberation had thereon, it is—

545 Ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the exceptions to the said master's report be, and the same are hereby, overruled, and said report is hereby confirmed in all particulars; that the findings of the said master in said report are hereby made the findings of this court; that the number of times the said railway scene was used and produced by the said defendants without the sanction and authority of the said complainant in said dramatic composition entitled "After Dark" is and was seven hundred and forty-seven (747) times, and that said unauthorized performances took place at the times and in the places specified in said master's report.

And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant his costs in this suit, as taxed at $328.65, and that the complainant have execution for such costs.

E. H. LACOMBE.

546 U. S. Circuit Court, Southern District of New York.

AUGUSTIN DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants.

Please to take notice that upon the master's report, filed the 17th day of January, 1893, and the defendants' objections thereto, filed the 26th day of January, 1893, and all the pleadings and proceedings herein a motion will be made at a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, to be held at the court-house, post-office building, in the city of New York, on the 17th day of February, 1893, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for a final decree in equity confirming said master's report in all particulars and awarding costs to the complainant herein, and for such other and further relief as may be just and equitable.

Dated 11th February, 1893.

Yours, etc., OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

To Messrs. Dittenhoefer & Gerber, solicitors for defendants.

A copy received Feb. 11, 1893.
DITTENHOEFER & GERBER.

547 (Endorsed:) U. S. circuit court for the southern district of New York. Augustin Daly, comp't, against George P. Webster and William A. Brady, impleaded, def'ts. Final decree and notice of motion. Olin, Rives & Montgomery, attorneys for complainant, 32 Nassau street, New York city. U. S. circuit court. Filed Apr. 1, 1893. John A. Shields, clerk.

548 United States Circuit Court.

AUGUSTIN DALY, Complainant and Appellee,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, &c., Defendants and Appellants.

Now comes George P. Webster and William A. Brady, the defendants and appellants herein, by A. J. Dittenhoefer, their solicitor, and in connection with their appeal herein make and file the following assignments of error:

I. That the said court held that the copyright claimed by the complainant in his bill of complaint was valid, whereas it should have held that the same was invalid, as the title of the book as filed differed from the title of the book as published.

II. That the said court held that the copyright claimed by the complainant in his bill of complaint was valid, whereas it should have held and determined that the same was invalid, inasmuch as complainant had not complied with the provisions of the statute in

such case made and provided to secure to himself a valid copyright of the dramatic composition or book claimed by him, and that he had not deposited the title of his book or dramatic composition, as required, or published the notice required by the statute on every copy of each edition of said book or dramatic composition.

549 III. That the court erred in holding and determining that the scene in the complainant's alleged copyrighted work designated "the railroad scene" was a composition original with the complainant or was novel and not published in other printed works and publications prior to the time complainant attempted to secure the copyright referred to in the bill of complaint.

IV. That the court erred in holding and determining that the scene in the complainant's alleged copyrighted work designated "the railroad scene" was a dramatic composition and the subject of protection under the copyright laws of the United States in such case made and provided.

V. That the said court erred in holding and determining that the defendants and appellants had infringed upon the copyright claimed by the complainant and violated the rights secured to him thereby.

VI. That the said court erred in directing the issuing of a perpetual injunction against the defendants and appellants and in directing the entry of the usual decree for an accounting and perpetual injunction by the circuit court of the United States.

VII. That in ordering, adjudging, and decreeing that the defendants and appellants had given seven hundred and forty-seven performances of the railroad scene in complainant's play without the sanction or authority of the complainant, as specified in the master's report, the court erred.

550 VIII. That the court erred in confirming the master's report, whereas the court should have held that the master's report should not be confirmed, and that the only unauthorized performances of the railroad scene in defendant's play "After Dark" given without the sanction or authority of complainant were three hundred and nineteen performances given during the period commencing August 12th, 1889, and ending July 27th, 1890, and three performances given during August, 1890, and three performances given during August, 1891.

IX. That in the final decree made and entered herein on the 1st day of April, 1893, the court erred in ordering, adjudging, and decreeing that the number of times the railroad scene was used and produced by the defendants and appellants without the sanction or authority of the complainant and a dramatic composition entitled "After Dark" is and was seven hundred and forty-seven times, and that said unauthorized performances took place at the times and in the places specified in the master's report, filed January 17th, 1893, whereas the court should have held and determined that there was no competent evidence produced that the said scene was used by the defendants and appellants more than three hundred and nineteen times during the period commencing August 12th, 1889, and

ending July 27th, 1890, and three additional times during August, 1890, and three additional times during August, 1891.

551 X. That the court erred in confirming the master's report, whereas it should have refused to do so for the reason that the master erroneously compelled the defendant William A. Brady to produce his books and to become a witness against himself as to the number of performances given by the defendant or, under the authority of "After Dark," the railroad scene claimed to be an infringement on complainant's alleged copyright.

And by reason of the aforesaid errors the said defendants and appellants, George P. Webster and William A. Brady, pray that the final decree entered herein on the 1st day of April, 1893, and the decree entered on the 6th day of November, 1892, and the mandate of the United States circuit court of appeals filed herein, pursuant to which the said decrees were entered, may be reversed, annulled, and all together held for naught, and that the case be remanded to the circuit court with directions that the decree entered herein on the 14th day of November, 1891, dismissing the bill of complaint on the merits with costs be affirmed and a decree entered dismissing the bill of complaint, and that they have such other and further relief as to the court may seem just.

A. J. DITTENHOEFER,
Solicitor for Appellants.

A. J. DITTENHOEFER, *Of Counsel.*

(Endorsed:) United States circuit court. Augustin Daly
552 *vs.* George P. Webster, impleaded, &c. Assignment of errors. A. J. Dittenhoefer, sol. for defendants, 96 Broadway, New York. U. S. circuit court. Filed Apr. 17, 1893. John A. Shields, clerk.

553 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants. } In Equity.

Know all men by these presents that we, William A. Brady, of New York city, New York, and James J. Corbett, New York city, N. Y., are firmly bound unto Augustin Daly in the sum of one thousand five hundred ($1,500) dollars, to be paid to the said Augustin Daly, his executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators or assigns, jointly and severally, by these presents.

Sealed with our seals the 12th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas a decree was entered herein in the United States circuit court for the southern district of New York on the 1st day of April,

1893, among other things, awarding to the complainant, Augustin Daly, the sum of three hundred and twenty-eight and $\frac{65}{100}$ ($328.65) dollars against the defendants George P. Webster and William A. Brady;

And whereas on the 5th day of November, 1892, an
554 interlocutory decree was entered in the said court in favor of the complainant, Augustin Daly, and against the defendants George P. Webster and William A. Brady for the sum of nine hundred and sixty-six and $\frac{8}{100}$ (966.08) dollars;

And whereas the said defendants, George P. Webster and William A. Brady, have appealed to the United States circuit court of appeals from the said final decree entered as aforesaid on the 1st day of April, 1893:

Now, therefore, the condition of this obligation is such that if the above-named appellants, George P. Webster and William A. Brady, shall prosecute said appeal with effect and pay the costs as above taxed, then this obligation shall be void; otherwise to remain in full force and effect.

WM. A. BRADY. [SEAL.]
JAS. J. CORBETT. [SEAL.]

Sealed and delivered and taken and acknowledged this 14th day of April, 1893.

[SEAL.] JNO. GRAVES,
U. S. Circuit Court Comm'r for East. Dist. of Mich.

UNITED STATES OF AMERICA, }
Eastern District of Michigan, } ss:

James J. Corbett, being duly sworn, deposes and says that he is a resident of and freeholder in the city of New York; that he is worth the sum of five thousand dollars over and above all his just debts and liabilities and property exempt by law from levy and
555 sale under an execution.

JAS. J. CORBETT.

Sworn to before me this 14th day of April, 1893.

[SEAL.] JNO. GRAVES,
U. S. Circuit Court Comm'r for the East'n Dist. of Michigan.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded. Bond. A. J. Dittenhoefer, sol. for appellants, 96 Broadway, New York. Approved. Dated April 17, 1893. E. H. Lacombe. U. S. circuit court. Filed Apr. 17, 1893. John A Shields, clerk.

556 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, Defendants. } In Equity.

To the honorable the Supreme Court of the United States and the justices thereof:

The appeal of the above-named George P. Webster and William A. Brady, defendants and appellants, respectfully showeth—

That upon the 20th day of May, 1889, the complainant filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendants and respondents, praying that the said defendants be enjoined and restrained from producing or performing a certain dramatic composition entitled "After Dark," or any colorable imitation thereof or of the railroad scene therein, or of complainant's play entitled "Under the Gaslight," or of the railroad scene therein, and for an accounting
557 and for an injunction pending the final determination of the suit, and for such other relief as might be just and proper; that on the same day an order was made and entered requiring the defendants to appear and show cause why an injunction should not be granted as aforesaid, and that on the 31st day of May, 1891, said motion was argued before the Honorable William J. Wallace, judge, and thereafter and on the 20th day of June, 1891, a decision was filed by him denying said motion, and that on the 23d day of July, 1891, an order to that effect was entered and filed in the clerk's office.

That on or about the 3d day of June, 1889, the defendants Webster and Brady filed their joint answer denying the averments in said bill and praying that it be dismissed with costs.

That on or about the 16th day of September, 1889, the defendant Miner filed his separate answer.

That on or about the 3d day of July, 1889, the complainant filed his replication, denying the averments of said answer of the defendants Webster and Brady, and on or about the 11th day of December, 1889, filed his replication denying the averments in the said answer of the defendant Miner.

That thereafter the complainant and the defendants Webster and Brady took their respective proofs for final hearing under the
558 67th rule of the Supreme Court, as amended, and that thereafter and on or about the 26th day of October, 1891, a final hearing was had in open court before the Honorable Alfred C. Coxe, judge.

That on the 14th day of November, 1891, a final decree was made and pronounced in the cause, wherein it was in substance adjudged

and decreed that the bill of the complainant be dismissed on the merits with costs.

That the complainant appealed from the whole of said decree to the United States circuit court of appeals for the second circuit, which appeal was duly allowed on the 4th day of December, 1891, and assignments of error filed on the 4th day of December, 1891.

That the defendants and appellants on the 8th day of December, 1891, duly filed their joinder in error in manner and form as required by the rules of practice; that thereafter the said appeal came on to be heard before the said United States circuit court of appeals for the second circuit upon the transcript of the record sent up from the said United States circuit court, and after hearing argument said court filed its mandate in the United States circuit court directing that the decree of the said court entered as aforesaid on the 14th day of November, 1891, be reversed, and that the
559 usual decree for accounting and perpetual injunction be entered by the said United States circuit court with costs of both courts to the complainant.

That thereupon and on the 5th day of November, 1892, the said circuit court did make and enter its decree, among other things, adjudging and decreeing that the said decree entered on the 14th day of November, 1891, in favor of these defendants, be reversed and adjudging and decreeing that the copyright of the complainant referred to in the complaint is good and valid; that the complainant is the sole and exclusive proprietor and owner of the dramatic composition "Under the Gaslight" and the originator of the railroad scene used in said dramatic composition, and that said scene is covered and protected by the said copyright, and that these defendants have violated the said exclusive rights of the complainant under the same by using and producing the railroad scene as copyrighted in the said dramatic composition "Under the Gaslight" and violated the complainant's rights under the copyright obtained by him, and—

Ordering, adjudging, and decreeing that a perpetual injunction be issued in this suit against these defendants, restraining them, their agents, servants, and all claiming or holding under or through them, from producing or performing the dramatic composition entitled "Under the Gaslight" or any colorable imitation
560 thereof or of producing or using or in any manner adapting or applying the railroad scene as used in the dramatic composition entitled "Under the Gaslight" or in any other dramatic production, and from advertising or announcing any performance or production of the said composition entitled "Under the Gaslight" or of said railroad scene therein, pursuant to the prayer of the said bill of complaint.

Also that the complainant recover of these defendants costs, charges, and disbursements in the circuit court of appeals as taxed at three hundred and thirty-six and $\frac{49}{100}$ ($336.49) dollars and in the United States circuit court as taxed at six hundred and twenty-nine and $\frac{59}{100}$ ($629.59) dollars, and referring it to one of the masters of this court to take, state, and report to the court an account of the num-

ber of times the said railway scene was used and produced by these defendants without the sanction or authority of the said complainant in said dramatic composition entitled "After Dark" and where the same was so produced and the terms and agreement under which said performances took place.

That thereafter the said master made his report, which bears date January 10th, 1893, and was filed in the office of the clerk of the United States circuit court for the southern district of New
561 York on the 17th day of January, 1893, to which these defendants filed exceptions on the 26th day of January, 1893; and thereupon and after the filing of the said report and exceptions thereto and after hearing counsel the said United States circuit court made its final decree, which was filed in the office of the clerk of said court on the 1st day of April, 1893, adjudging and decreeing that the exceptions to the master's report be overruled and the said master's report confirmed in all particulars, and making the findings of the master the findings of the court, and that the number of times the said railroad scene was used and produced by the said defendants without the sanction and authority of the complainant in the said dramatic composition entitled "After Dark" was 447 times, and the said unauthorized performances took place at the times and in the places specified in said master's report.

And further adjudging and decreeing that the defendants pay to the complainant costs as taxed at three hundred and twenty-eight and $\frac{65}{100}$ ($328.65) dollars.

That the said copyright of the complainant, as claimed by him, is worth more than five thousand ($5,000) dollars, and the matter in controversy exceeds one thousand ($1,000) dollars, besides costs.

Now, therefore, these defendants, George P. Webster and William A. Brady, feeling aggrieved, do hereby appeal to the United States circuit court of appeals from the said decree filed herein as aforesaid on the 1st day of April, 1893, and from the whole and each and every part of the said decree, and upon the said ap-
562 peal intend to bring up for review the mandate of the United States circuit court of appeals filed herein as aforesaid, directing that the decree of the United States circuit court entered on the 14th day of November, 1891, be reversed, and also the decree entered in accordance with the said mandate in the United States circuit court on the 5th day of November, 1892, and do hereby also appeal from the said mandate and the said decree, and respectfully pray that the said decree entered on the 1st day of April, 1893, and the bill of complaint, answers, replications, transcript, and mandate of the United States circuit court of appeals and decree entered in accordance therewith and all the pleadings, depositions, evidence, exhibits, proofs, and proceedings in the said cause may be sent to the United States circuit court of appeals without delay, duly authenticated; that their appeal may be allowed, and that the said circuit court of appeals may proceed to hear the cause anew, and that the said decree of the circuit court may be reversed and the decree entered herein on the 14th day of November, 1891, dis-

missing the bill of complaint may be affirmed, or such other decree made as to the said circuit court of appeals shall seem just.

A. J. DITTENHOEFER,
Solicitor for Def'ts Webster & Brady,
96 *Broadway, New York City.*

The foregoing appeal is allowed.
New York, April 17, 1893.

E. H. LACOMBE.

563 (Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded. Petition on appeal. A. J. Dittenhoefer, sol'r for defendants, 96 Broadway, New York. Due service of a copy of the within admitted. Olin, Rives & Montgomery, sol'rs for plaintiff, 32 Nassau St., N. Y. city. U. S. circuit court. Filed May 10, 1893. John A. Shields, clerk.

564 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY, Complainant,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, etc., Defendants. } In Equity.

Citation on Appeal.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York and of the United States court of appeals for the second circuit, United States of America, for the southern district of New York, *ss:*

Whereas George P. Webster and William A. Brady have appealed to the circuit court of appeals for the second circuit from the decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Augustin Daly, and have filed the security required by law:

Therefore you are hereby cited to appear before the said United States circuit court of appeals for the southern district of New York, to be holden at the city of New York on the 16th day of May, 1893, to do and to receive what may appertain to justice to be done in the premises.

565 Given under my hand, at the city of New York, in the second circuit, on the 17th day of April, 1893.

E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady. Citation on appeal. A. J. Dittenhoefer, solicitor for def'ts Webster & Brady, 96 Broadway, New York. Due service of a copy of the within admitted. Olin, Rives & Montgomery, sol'rs for plaintiff, 32 Nassau St., N. Y. city. U. S. circuit court. Filed May 10, 1893. John A. Shields, clerk.

566 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of New York, Greeting: [SEAL.]

Whereas lately, in the circuit court of the United States for the southern district of New York, before you or some of you, in a cause between Augustin Daly, complainant, and William A. Brady and George P. Webster, impleaded, etc., defendants, wherein the decree of the said court is in the words and figures following, viz:

"This cause having come on to be heard upon the report of John E. Ward, Esq., one of the masters of this court, to whom it was referred to ascertain, take, state, and report to the court an account of the number of times the railway scene mentioned and described in the interlocutory decree entered herein on the 5th of November, 1891, was used and produced by said defendants without the sanction and authority of said complainant in said dramatic composition entitled "After Dark" and where each and every of such unauthorized performance and production took place and the terms and agreements under which said unauthorized performance took place, which report bears date the 10th day of January, 1893, and upon reading said report, filed the 17th day of January, 1893, and the defendants' objections thereto, filed the 26th day of January, 1893, and the said cause having been argued by counsel and due deliberation had thereon, it is—

567 Ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the exceptions to the said master's report be, and the same are hereby, overruled, and said report is hereby confirmed in all particulars; that the findings of the said master in said report are hereby made the findings of this court: that the number of times the said railway scene was used and produced by the said defendants without the sanction and authority of the said complainant in said dramatic composition entitled "After Dark" is and was seven hundred and forty-seven (747) times, and that said unauthorized performance took place at the times and in the places specified in said master's report.

And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant his costs in this suit as taxed at $328.65, and that the complainant have execution for such costs.

(Signed) E. H. LACOMBE."

as by the inspection of the transcript of the record of the said court, which was brought into the United States circuit court of appeals for the second circuit by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our

Lord one thousand eight hundred and ninety-two, the said
568 cause came on to be heard before the said United States circuit court of appeals for the second circuit on the said transcript of record and was argued by counsel:

On consideration whereof it is now here by the court ordered, adjudged, and decreed that the said final decree of the circuit court of the United States for the southern district of New York be, and the same hereby is, in all respects affirmed, with costs taxed at the sum of twenty-six dollars and seventy-five cents ($26.75).

June 7, 1893.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of June, in the year of our Lord one thousand eight hundred and ninety-three.

Costs of Appellee.

Clerk	$6 50
Notary	25
Attorney	20 00
	$26 75

JOHN A. SHIELDS,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

(Endorsed:) United States circuit court of appeals for the second circuit. No. 127. October term, 1892. Augustin Daly *vs.*
569 George P. Webster and another. Mandate. U. S. circuit court. Filed Jun- 14, 1893. John A. Shields, clerk.

570 At a stated term of the circuit court of — America for the southern district of New York, held in the post-office building, in the city of New York, on the 14th day of June, 1893.

Present: Hon. E. Henry Lacombe, circuit judge.

AUGUSTINE DALY, Complainant,
against
GEORGE P. WEBSTER and WILLIAM A. BRADY, Defendants.

An appeal having been taken herein by the defendants, George P. Webster and William A. Brady, to the United States circuit court of appeals for the second circuit upon a transcript of the record sent up from this court, and a mandate of the said circuit court of appeals having been filed in this court directing that the decree of this court heretofore entered on the first day of April, 1893, be affirmed with costs:

Now, upon the said mandate and upon all the pleadings and pro-

ceedings herein and on motion of Olin, Rives & Montgomery, solicitors for the complainant—

571 It is ordered, adjudged, and decreed that the decree of the circuit court of appeals be, and the same hereby is, made a decree of this court, and that the final decree of this court entered herein on the first day of April, 1893, be, and the same hereby is, in all respects affirmed.

And it is further ordered, adjudged, and decreed that the said complainant recover of the said defendants his costs, charges, and disbursements of this appeal, both in the circuit court of appeals, as taxed at the sum of $26.75, and in this court, as taxed at three & $\frac{50}{100}$ dollars, and that the said complainant have execution for such costs.

E. H. LACOMBE.

We hereby consent to the entry of the foregoing order.

OLIN, RIVES & MONTGOMERY,
Compl't's Sol'rs.
DITTENHOEFER & GERBER,
Def'ts' Sol'rs.

(Endorsed:) Circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady. Order. Dittenhoefer, Gerber & James, attorneys for defendants, 96 Broadway, New York. U. S. circuit court. Filed Jun- 14, 1893. John A. Shields, clerk.

572 United States Circuit Court.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, &c.

Now comes George P. Webster and William A. Brady, the defendants and appellants herein, by A. J. Dittenhoefer, their solicitor, and in connection with their appeal herein make and file the following assignments of error:

I.

That the court held that the copyright claimed by the complainant in his bill of complaint was valid, whereas it should have held that the same was invalid, as the title of the book as filed differed from the title of the book as published.

II.

That the said court held that the copyright claimed by the complainant in his bill of complaint was valid, whereas it should have held and determined that the same was invalid, inasmuch as complainant had not complied with the provisions of the statute in such case made and provided to secure to himself a valid copyright of the dramatic composition or book claimed by him, and that he had

not deposited the title of his book or dramatic composition
573 as required or published the notice required by the statute on every copy of each edition of said book or dramatic composition.

III.

That the court erred in holding and determining that the scene in the complainant's alleged copyrighted work designated "the railroad scene" was a composition original with the complainant or was novel and not published in other printed works and publications prior to the time complainant attempted to secure the copyright referred to in the bill of complaint.

IV.

That the court erred in holding and determining that the scene in the complainant's alleged copyrighted work designated "the railroad scene" was a dramatic composition and the subject of protection under the copyright laws of the United States in such case made and provided.

V.

That the said court erred in holding and determining that the defendants and appellants had infringed upon the copyright claimed by the complainant and violated the rights secured to him thereby.

VI.

That the court erred in directing and issuing of a perpet-
574 ual injunction against the defendants and appellants and in directing the entry of the usual decree for an accounting and perpetual injunction by the circuit court of the United States.

VII.

That in ordering, adjudging, and decreeing that the defendants and appellants had given seven hundred and forty-seven performances of the railroad scene in complainant's play without the sanction or authority of the complainant, as specified in the master's report, the court erred.

VIII.

That the court erred in confirming the master's report, whereas the court should have held that the master's report should not be confirmed, and that the only unauthorized performances of the railroad scene in defendant's play "After Dark" given without the sanction or authority of complainant were three hundred and nineteen performances given during the period commencing August 12th, 1889, and ending July 27th, 1890, and three performances given during August, 1890, and three performances given during August, 1891.

IX.

That in the final decree made and entered herein on the first day of April, 1893, the court erred in ordering, adjudging, and decree-

ing that the number of times the railroad scene was used and produced by the defendants and appellants without the sanction
575 or authority of the complainant and a dramatic composition entitled "After Dark" is and was seven hundred and forty-seven times, and that said unauthorized performances took place at the times and in the places specified in the master's report filed January 17th, 1893, whereas the court should have held and determined that there was no competent evidence produced that the said scene was used by the defendants and appellants more than three hundred and nineteen times during the period commencing August 12th, 1889, and ending July 27th, 1890, and three additional times during August, 1890, and three additional times during August, 1891.

X.

That the court erred in confirming the master's report, whereas it should have refused to do so for the reason that the master erroneously compelled the defendant William A. Brady to produce his books and to become a witness against himself as to the number of performances given by the defendant or under his authority of "After Dark," the railroad scene claimed to be an infringement on complainant's alleged copyright.

XI.

576 That the said circuit court of appeals erred in making its order affirming the decree entered on the first day of April, 1893, and in issuing its mandate directed to the United States circuit court ordering and directing the affirmance of the said final decree made April first, 1893, whereas it should have reversed the said decree and ordered its reversal and affirmed the decree entered on the 14th day of November, 1891, dismissing the bill of complaint, and issued its mandate accordingly; and by reason of the aforesaid errors the said defendants and appellants, George P. Webster and William A. Brady, pray that the final decree entered herein on the first day of April, 1893, and the decree entered on the 5th day of November, 1892, and the mandate of the United States circuit court of appeals filed on the 5th day of November, 1892, pursuant to which the said decrees were entered, and the order of the United States circuit court of appeals entered on the 7th day of June, 1893, affirming the said decree entered April 1st, 1893, and the mandate of the United States circuit court filed on the 14th day of June, 1893, directing the said affirmance of the said final decree, and the order and judgment of the United States circuit court entered on the 14th day of June, 1893, pursuant to the aforesaid order and mandate of the United States circuit court of appeals, may be reversed, annulled, and altogether held for naught, and that
577 the case be referred to the circuit court with direction that the decree entered herein on the 14th day of November, 1891, dismissing the bill of complaint on the merits with costs, be affirmed

and a decree entered dismissing the bill of complaint, and that they have such other and further relief as to the court may seem just.

A. J. DITTENHOEFER,
Solicitor for Appellants, 96 Broadway, New York, N. Y.
A. J. DITTENHOEFER,
Of Counsel.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded, &c. Assignment of error. A. J. Dittenhoefer, solicitor for defendants and appellants, 96 Broadway, New York. U. S. circuit court. Filed Jul 19, 1893. John A. Shields, clerk.

578 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded, &c. } In Equity.

Know all men by these presents that we, William A. Brady, of the city, county, and State of New York, and Maria R. Brady, of the city, county, and State of New York, are firmly bound unto Augustin Daly in the sum of one thousand five hundred ($1,500) dollars, to be paid to the said Augustin Daly, his executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators or assigns, jointly and severally, by these presents.

Sealed with our seals the 11th day of July, in the year of our Lord one thousand eight hundred and ninety-three.

579 Whereas a decree was entered herein in the United States circuit court for the southern district of New York on the 1st day of April, 1893, among other things awarding to the complainant, Augustine Daly, the sum of three hundred and twenty-eight and $\frac{65}{100}$ ($328.65) dollars against the defendants, George P. Webster and William A. Brady;

And whereas on the 5th day of November, 1892, an interlocutory decree was entered in the said court in favor of the complainant, Augustine Daly, and against the defendants, George P. Webster and William A. Brady, for the sum of nine hundred and sixty-six and $\frac{8}{100}$ ($966.08) dollars;

And whereas the said defendants, George P. Webster and William A. Brady, appealed to the United States circuit court of appeals from the said final decree entered as aforesaid on the first day of April, 1893, which said circuit court of appeals affirmed the said final decree, and on the 7th day of June, 1893, entered its order directing a mandate to issue affirming the said final decree accordingly with costs, and a mandate was issued accordingly to the United States

circuit court, and an order of the United States circuit court having been duly made and entered thereon on the 14th day of June, 1893, making the said judgment of the United States circuit court of appeals the judgment of the *judgment of the* United States circuit court and awarding to the said complainant and respondent the sum of thirty and $\frac{25}{100}$ ($30.25) dollars costs:

580 Now, therefore, the condition of this obligation is such that if the above-named appellants, George P. Webster and William A. Brady, shall prosecute said appeal with effect and pay the costs as above taxed, then this obligation shall be void; otherwise to remain in full force and effect.

MARIA R. BRADY.
WM. A. BRADY.

Sealed, delivered, taken, and acknowledged this 11 day of July, 1893.

H. G. WILEY,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

581 UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Marie R. Brady, being duly sworn, deposes and says that she is a resident of and freeholder in the city of New York; that she is worth the sum of five thousand ($5,000) dollars over and above all her just debts and liabilities and property exempt by law from levy and sale under an execution.

MARIE R. BRADY.

Sworn to before me this 11th day of July, 1893.

H. G. WILEY,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded, &c. Bond. The within undertaking is hereby approved both as to form and as to the sufficiency of the surety named therein. Dated N. Y., July 13, 1893. E. H. Lacombe. A. J. Dittenhoefer, defendants' solicitor, 96 Broadway, N. Y. U. S. circuit court. Filed Jul- 13, 1893. John A. Shields, clerk.

582 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY, Complainant and Appellee,
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded with Henry C. Miner, Defendants and Appellants. } In Equity.

To the honorable the Supreme Court of the United States and the justices thereof:

The appeal of the above-named George P. Webster and William A. Brady, defendants and appellants, respectfully showeth—

That upon the 20th day of May, 1889, the complainant filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendants and respondents, praying that the said defendants be enjoined and restrained from producing or performing a certain dramatic composition
583 entitled "After Dark" or any colorable imitation thereof or of the railroad scene therein, or of complainant's play entitled "Under the Gaslight" or of the railroad scene therein, and for an accounting and for an injunction pending the final determination of the suit, and for such other and further relief as might be just and proper; that on the same day an order was made and entered requiring the defendants to appear and show cause why an injunction should not be granted as aforesaid, and that on the 31st day of May, 1891, said motion was argued before the Honorable William J. Wallace, judge, and thereafter and on the 20th day of June, 1891, a decision was filed by him denying said motion, and that on the 23rd day of July, 1891, an order to that effect was entered and filed in the clerk's office.

That on or about the 3rd day of June, 1889, the defendants Webster and Brady filed their joint answer denying the averments in said bill, and praying that it be dismissed with costs.

That on or about the 16th day of September, 1889, the defendant Miner filed his separate answer.

That on or about the 3rd day of July, 1889, the complainant filed his replication denying the averments of said answer of the defendants Webster and Brady, and on or about the 11th day of
584 December, 1889, filed his replication denying the averments in the said answer of the defendant Miner.

That thereafter the complainant and the defendants Webster and Brady took their respective proofs for final hearing under the 67th rule of the Supreme Court, as amended, and that thereafter and on or about the 26th day of October, 1891, a final hearing was had in open court before the Honorable Alfred C. Coxe, judge.

That on the 14th day of November, 1891, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed that the bill of the complainant be dismissed on the merits with costs.

That the complainant appealed from the whole of said decree to

the United States circuit court of appeals for the second circuit, which appeal was duly allowed on the 4th day of December, 1891, and assignments of error filed on the 4th day of December, 1891.

That the defendants and appellants, on the 8th day of December, 1891, duly filed their joinder in error in manner and form as required by the rules of practice; that thereafter the said appeal came on to be heard before the said United States circuit court of appeals for the second circuit upon the transcript of the record sent up from the said United States circuit court, and, after hearing argument,

585 said court filed its mandate in the United States circuit court directing that the decree of the said court entered as aforesaid on the 14th day of November, 1891, be reversed, and that the usual decree for accounting and perpetual injunction be entered by the said United States circuit court with costs of both courts to the complainant.

That thereupon and on the 5th day of November, 1892, the said circuit court did make and enter its decree, among other things, adjudging and decreeing that the said decree entered on the 14th day of November, 1891, in favor of these defendants be reversed, and adjudging and decreeing that the copyright of the complainant referred to in the complaint is good and valid; that the complainant is the sole and exclusive proprietor and owner of the dramatic composition "Under the Gaslight" and the originator of the railroad scene used in said dramatic composition, and that said scene is covered and protected by the said copyright, and that these defendants and appellants have violated the said exclusive rights of the complainant under the same by using and producing the railroad scene as copyrighted in the said dramatic composition "Under the Gaslight" and violated the complainant's rights under the copyright obtained by him, and—

Ordering, adjudging, and decreeing that a perpetual injunction be issued in this suit against these defendants, restraining

586 them, their agents, servants, and all claiming or holding under or through them, from producing or performing the dramatic composition entitled "Under the Gaslight," or any colorable imitation thereof, or of producing or using or in any manner adapting or applying the railroad scene as used in the dramatic composition entitled "Under the Gaslight," or in any other dramatic production, and from advertising or announcing any performance or production of the said composition entitled "Under the Gaslight," or of said railroad scene therein, pursuant to the prayer of the said bill of complaint; and, further—

That the complainant recover of the said defendants costs, charges, and disbursements in the circuit court of appeals as taxed at three hundred and thirty-six and $\frac{49}{100}$ ($336.49) dollars, and in the United States circuit court as taxed at six hundred and twenty-nine and $\frac{69}{100}$ ($629.69) dollars, and referring it to one of the masters of this court to take, state, and report to the court an account of the number of times the said railway scene was used and produced by these defendants without the sanction or authority of the said complainant in said dramatic composition entitled "After Dark" and where

the same was so produced and the terms and agreement under which said performances took place.

That thereafter the said master made his report, which bears date January 10th, 1893, and was filed in the office of the clerk of
587 the United States circuit court for the southern district of New York on the 17th day of January, 1893, to which these defendants filed exceptions on the 26th day of January, 1893; and thereupon and after the filing of the said report and exceptions thereto and after hearing counsel the said United States circuit court duly made its final decree on the 1st day of April, 1893, adjudging and decreeing that the exceptions to the said master's report be overruled, and that the report be confirmed in all particulars, and the findings of the master in said report were made the findings of the circuit court; that the number of times the said railway scene was used and produced by the said defendants without the sanction or authority of the complainant in said dramatic composition entitled "After Dark" were 747 times, and that said unauthorized performance took place at the times and places specified in said master's report, and further adjudging and decreeing that the defendants pay to the complainant costs as taxed at three hundred and twenty-eight ($328) dollars.

That the defendants, George P. Webster and William A. Brady, appealed from the whole of the said decree to the United States circuit court of appeals for the second circuit, and gave notice that upon said appeal they intended to bring up for review the mandate of the United States circuit court of appeals directing that the decree of the United States circuit court, entered on the 14th day of November, 1891, be reversed, and also the decree entered in
588 accordance with the said mandate in the said United States circuit court on the 6th day of November, 1892, which appeal was duly allowed on the 17th day of April, 1893, and assignments of error filed on the 17th day of April, 1893; that thereafter said appeal came on to be heard before the said United States circuit court of appeals for the second circuit upon the transcript of the record sent up from the said United States circuit court, and after hearing argument said court on the 7th day of June, 1893, made its order affirming the said decree entered on the first day of April, 1893, with costs, and filed its mandate in the United States circuit court directing that the decree of the said court entered as aforesaid on the first day of April, 1893, be affirmed in all respects; that thereafter and on the 14th day of June, 1893, the said United States circuit court duly made its order directing that the said judgment of the United States circuit court of appeals for the second circuit be made the judgment of the said United States circuit court, and awarded to the complainant the sum of thirty and $\frac{25}{100}$ ($30.35) dollars' costs.

Now, therefore, these defendants, George P. Webster and William A. Brady, feeling aggrieved, do hereby appeal to the Supreme Court of the United States from the order and judgment entered on the 14th day of June, 1893, affirming the final decree entered on the first day of April, 1893, and from the order of the United States cir-

cuit court of appeals, entered on the 7th day of June, 1893,
589 affirming the final decree entered April 1st, 1893, and directing a mandate to issue affirming the said final decree of April 1st, 1893, and also from the mandate issued in accordance therewith, and upon the said appeal defendants intend to bring up for review the order of the United States circuit court of appeals filed on the 5th day of November, 1892, directing that the decree of the United States circuit court entered on the 14th day of November, 1891, be reversed, and directing a mandate to issue to the United States circuit court accordingly, and also the mandate so issued, and also the decree entered in accordance with the said mandate in the United States circuit court on the 5th day of November, 1892, and respectfully pray that the final decree entered on the 1st day of April, 1893, and the interlocutory decree entered on the 5th day of November, 1892, and the bill of complaint, answers, replications, transcript, and mandates of the United States circuit court of appeals and decree*d* entered in accordance therewith, and all the pleadings, depositions, evidence, exhibits, proofs, and proceedings in the said cause, be sent to the Supreme Court of the United States without delay, duly authenticated; that their appeal may be allowed, and that the Supreme Court may proceed to hear the cause anew, and that the decrees of the circuit court entered in accordance with the orders and mandate of the circuit court of appeals may be reversed, and the decree entered herein on the 14th day of
590 November, 1891, dismissing the bill of complaint may be affirmed or said other decree made as to the said Supreme Court shall seem just.

Dated July 13th, 1893.

GEORGE P. WEBSTER,
By A. J. DITTENHOEFER,
Att'y & Solicitor for Appellant.
WILLIAM A. BRADY,
By A. J. DITTENHOEFER,
Att'y & Solicitor for Appellant.

The foregoing appeal is allowed.
Dated New York, July 13th, 1893.

E. HENRY LACOMBE.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded, &c. Petition and allowance of appeal. A. J. Dittenhoefer, solicitor for defendants & appellants, 96 Broadway, New York. Received a copy of this paper on Jul- 13, 1893. Olin, Rives & Montgomery, sol'r- for complainants. U. S. circuit court. Filed Jul- 14, 1893. John A. Shields, clerk.

591 United States Circuit Court, Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded with HENRY C. MINER.

It is hereby stipulated that in certifying the record in the above-entitled action to the Supreme Court of the United States on the appeal of the above-named defendants, which appeal was allowed on the 13th day of July, 1893, the clerk of the United States circuit court shall omit the following pages from the record filed in the United States circuit court of appeals:

Pages 111, 159, 160, 310, 356, 357, 358, 359, 360, 361; also from Exhibit "Lonely Man of the Ocean" all that follows scene second, act 1, on page 8 of said exhibit; of Exhibit "Railroad Station," pages 404, 405 of the record and all that follows page 5 of the said exhibit, and pages 428, 429, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, and 476 of the record.

OLIN, RIVES & MONTGOMERY,
Att'y for Complainant & Appellee.
A. J. DITTENHOEFER,
Solicitor for Defendants & Appellants.

Dated 14th July, 1893.

592 (Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster, impleaded, &c. Stipulation. Dittenhoefer, Gerber & James, attorneys for defendants, 96 Broadway, New York. U. S. circuit court. Filed Jul- 20, 1893. John A. Shields, clerk.

592*a* At a stated term of the United States circuit court, held in and for the southern district of New York, in the post-office building, in the city of New York, on the 7th day of August, 1893.

Present: Hon. E. Henry Lacombe, justice.

AUGUSTIN DALY
vs.
WILLIAM A. BRADY, Impleaded with Others.

On reading and filing the annexed consent—

Ordered that the consent affixed to the order of affirmance entered herein on the 14th day of June, 1893, which appears on page 571 of the original record, certified up by the clerk of this court to the United States Supreme Court, and reads, "We hereby consent to the entry of the foregoing order," be, and the same hereby is, amended, *nunc pro tunc*, so as to read, "We hereby approve of the foregoing order as to form."

E. H. LACOMBE.

We hereby consent to the entry of the foregoing order.
Dated New York, August 4th, 1893.

A. J. DITTENHOEFER,
Solicitor for Defendants.
OLIN, RIVES & MONTGOMERY,
Solicitors for Complainant.

592*b* (Endorsed:) United States circuit court. Augustin Daly *vs.* William A. Brady, imp. Consent & order. Dittenhoefer, Gerber & James, attorneys for defendant-, 96 Broadway, New York. U. S. circuit court. Filed Aug. 9, 1893. John A. Shields, clerk.

593 United States Circuit Court for the Southern District of New York.

AUGUSTIN DALY
vs.
GEORGE P. WEBSTER and WILLIAM A. BRADY, Impleaded. } In Equity.

Citation on Appeal.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, and of the United States court of appeals for the second circuit.

United States of America for the Southern District of New York, *ss:*

Whereas George P. Webster and Wiiliam A. Brady have appealed to the Supreme Court of the United States *for* the decree lately rendered in the circuit court of the United States for the southern district of New York made in favor of you, the said Augustin Daly, which decree was affirmed by the United States circuit court of appeals, and the said George P. Webster and William A. Brady have appealed to the said Supreme Court of the United States
594 from the order and mandate directing an affirmance of the said decree and from the decree entered in accordance with the said order and mandate and filed the security required by law:

Therefore you are hereby cited to appear before the said Supreme Court, at a term thereof to be holden at Washington on the 10th day of August, 1893, to do and to receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the second circuit, on the 13 day of July, 1893.

E. HENRY LACOMBE.

(Endorsed:) United States circuit court. Augustin Daly *vs.* George P. Webster and William A. Brady, impleaded. Citation on appeal. A. J. Dittenhoefer, solicitor for def'ts, 96 Broadway, New York. Received a copy of this paper on Jul- 13, 1893. Olin, Rives & Montgomery, sol'rs for complainant. U. S. circuit court. Filed Jul- 14, 1893. John A. Shields, clerk.

595 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 594, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Augustin Daly, complainant and appellee, against George P. Webster and William A. Brady, defendants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 9th day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the said United States the one hundred and eighteenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 15,380. S. New York C. C. U. S. Term No., 265. George P. Webster & William A. Brady, appellants, *vs.* Augustin Daly. Filed August 17th, 1893.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 265.

GEORGE P. WEBSTER and WILLIAM A. BRADY,
Appellants,

vs.

AUGUSTIN DALY,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Statement.

The appellee, claiming to be the owner of the copyright of a dramatic composition entitled "Under the "Gaslight, a Drama of Life and Love in these Times," filed a bill in equity to enjoin the appellants from producing the play entitled "After Dark" written by the late Dion Boucicault. *The two plays are confessedly dissimilar; having nothing in common in title, plot, dramatis personæ or dialogue* (Record, p. 15). The bill rests upon the narrow claim of an alleged infringement of what is known as the railroad incident in the third scene of the fourth act of appellees' play. Across the rear of the stage railroad tracks are laid, on which

one of the characters is bound and rescued by another character, just as a train is about to pass over him (Record, pp. 110–113). The incident occupies less than five minutes in its performance. The bill charges that, at the National Theatre, in Philadelphia, performances were given by appellants of the play "After Dark," in which a similar incident was represented, and that they threatened to continue the representation at the theatre of the defendant Miner in New York. The said Philadelphia performance is described by the appellee's witness substantially as follows:

In one of the scenes (scene of interior of saloon), a character called Gordon Chumley is drugged, while another character "Old Tom," who springs up to help him, is seized and thrown down a trap-door of the stage. The following scene shows an underground chamber in which "Old Tom" is found roaming around trying to find out where he is. He seems to hear noises and climbs to a window and he sees the villain of the play, a person ~~something~~ lowering into an adjoining apartment, which was an underground railroad tunnel. He recognizes the person as Gordon Chumley. The scene changes to an underground railroad tunnel, and the body of Gordon Chumley is seen hanging by a rope fastened under his arms, his feet being about one or two feet from the stage. Chumley seems to be unconscious. The whistle of a train is heard, and "Old Tom" breaks through a hole which he makes in the wall, and seizing the body, pulls it toward the audience just in time to avoid its being struck by the engine of a train which, with one car attached, crosses the stage (pp. 17, 18, 26).

In the performances at Miner's Theatre in New York (p. 6, fol. 10 of Record), Gordon Chumley, the character in danger from the passing train, is seen *staggering in a drugged or dazed condition against a switch arm, whereby the train is side-tracked as it approaches the stage* (162–164 of Record). *He was not rescued by*

another character, but unwittingly saves himself just as the train crosses the stage.

The appellee does not pretend that the incident of a railroad train crossing the stage is novel and original with him (p. 30 of Record), and the fact, on the contrary, is, as stated by the Court of Appeals, that: "In "all except the rescue by a third person, the com- "plainant was not the first to conceive the story. "Of course, in mere peril and rescue—peril which "the imperiled person is helpless to avert, rescue at "the last moment by exertion against obstacles—there "was nothing which any one, in this age of the world, "could claim as his own. What the complainant con- "tends was his own conception was the introducing of "the moving railroad train as the source of peril, and "confinement to its track as a method of assassination. "But before he copyrighted his play there had been "published in a monthly magazine (the 'Galaxy') a "story entitled 'Captain Tom's Fright.' It differs en- "tirely from the complainant's play, except that it con- "tains a 'railroad scene,' in which a person is tied "upon a railroad track so as to be in apparent peril of "his life from any approaching train. From this peril "he is rescued by the circumstance, unexplained and "unexpected, that a switch had been turned so that "the train, which did come, passed him, not on the "straight track but on a cut-off. Such incidents of "peril from railroad trains, and rescue therefrom, being "common literary property (it does not appear that "'Captain Tom's Fright' was copyrighted), it is ap- "parent that the complainant's composition is novel "only by reason of the introduction of the rescuer, "whose presence is therefore so essential to the 'dra- "'matic composition' that a representation which dis- "penses with his presence would not be an infringe- "ment" (56 Fed. Rep., 487, 488).

The combination of the crossing on the stage of a railroad train and of the rescue of the imperiled person *by another* seems to be the only claim of the appellee,

and upon that narrow issue this suit rests. It is described by him as follows:

" x-Q. 94. What do you claim as your invention or " origination in the play in question so far as relates to " the railroad scene; of course, the other scenes are not " in question?

" A. I claim the combination of circumstances by " which a person or any individual is placed on a rail- " road track so as to be in peril of his life from an ap- " proaching train, and is rescued from his position by " another person just in time to be saved from the train " which passes across the stage.

" x-Q. 95. Then the mere incident of the train pass- " ing the stage disconnected from the other incidents " is not claimed by you as original?

" A. No, and never was claimed so.

" x-Q. 96. Nor do you claim as your original inven- " tion or first idea the fact that one character in the " play being rescued by another while in peril of his " life?

" A. Certainly not. It is the combination of cir- " cumstances I claim as original " (p. 29, 30 of Record).

The mechanical device of the railroad train *was patented by one John C. Denham* (p. 168, 171, Record; Defendant's Exhibit Denham's Receipts, pp. 176, 177; Defendant's Exhibit, Denham-Daly Contract, p. 169 of Record).

The railroad train not being claimed by the appellee; the incident of crossing the stage not being original with him; the laying of a character on the track being a well-known incident that appeared in publications prior to the copyright of appellee's play, the only thing left to the appellee is the saving of said character *by being dragged from the track by another person.*

The appellee's copyright was secured August 1st, 1867, and the bill alleges that before that date he " invented, composed and wrote a dramatic composi- " tion called '*Under the Gaslight; a Romantic Pano-* " *'rama of the Streets and Homes of New York,*' in five

" acts " (p. 2, fol. 3), and that on said day he recorded " *said title,*" as required by law, and received a certificate of record " *containing said title of said composition* " (p. 3 of Record), which is made a part of the bill (p. 8). The said certificate declares that the appellee " deposited in the office of the Clerk of the District " Court for the Southern District of New York, the " title of a book or dramatic composition, the title of " which is in the words following, to wit : ' Under the " ' Gaslight ; a *Romantic Panorama of the Streets and* " ' *Homes of New York* " (p. 8, fol. 13 ; see also complainants certificate of deposit in the Clerk's Office, p. 142).

It is further alleged in the bill that after causing the said composition to be printed and published he deposited a copy thereof with the Clerk of the said District Court and in the Library of Congress at Washington (p. 3). The composition, thus printed and deposited, contained *not* the title set forth in the bill, and filed with the Clerk of the District Court, but the title " Under the Gaslight ; a totally original and picturesque *Drama of Life and Love in these Times*" (pp. 68, 69 of Record). A motion was made by appellant for an injunction *pendente lite*, which was denied after argument by Judge WALLACE on the ground that the appellee's copyright was invalid in that the title as filed and claimed by him differed from the title printed upon the book (p. 65 of Record), and on final hearing Judge COXE dismissed the bill (pp. 329, 330). The Court of Appeals reversed the judgment and ordered an accounting ; Judges LACOMBE and SHIPMAN composing the Court. Exceptions were filed to the Master's report and to his refusal to make the findings requested by the appellants (pp. 369–371). The exceptions were overruled and a final decree entered (p. 374), from which, after an affirmance by the Court of Appeals, an appeal was duly taken and allowed by Judge LACOMBE (pp. 390–393).

Errors Asserted and Intended to be Urged.

I. The rescue of one character by another in a play is not of itself the subject of copyright.

II. If it be copyrightable it was not original with the appellee.

III. A railroad scene upon a stage and the placing of a character upon the track so as to endanger his life, being old, rescue by another character by being dragged from the track would naturally suggest itself to any playright, and is therefore not an invention, discovery or origination in which any one can have a monopoly.

IV. There is no valid copyright, inasmuch as the title of the play as set forth in the bill, and filed in the United States District Court Clerk's Office, differed materially from the title of the book or dramatic composition as subsequently printed and published.

V. The appellee did not comply with the copyright statutes, in that a copy of the book was not deposited in the United States District Court Clerk's Office as required by the copyright statutes in force in 1867.

VI. The appellee failed to show that he gave the statutory notice of copyright on the title page or next succeeding page of each book, as required by the said statutes.

VII. There was a total failure of proof of infringement by appellants, as the performances complained of in the bill did not in any way violate appellee's rights.

VIII. The appellee abandoned whatever rights he may have had in the said railroad incident, by permit-

ting publications containing a similar incident to continue for years without restraint.

IX. There was error in overruling the exceptions to the Master's report, who compelled the appellant Brady to produce his books and papers and become a witness against himself, and render himself liable to the penalties provided by Section 4966 of the United States Revised Statutes.

ARGUMENT.

First Error.

The incident of the rescue of one character by another in a play is not in itself the subject of copyright.

That is appellee's narrow claim. He makes no claim to the placing of a railroad track upon the stage, or to the passing of cars thereon, or to the placing of a body upon the track in front of an approaching train, but the *single incident of the rescue of that character by another comprises his entire claim.* A character saving himself by staggering from the track or falling against the switch arm and sidetracking the train would consequently be no infringement, as was held by the Court of Appeals.

It is not pretended that appellant copied or in any manner pirated the dialogue or words of appellee's copyrighted book, *and it is conceded that there is not the faintest resemblance between the two plays as to plot or characters or dialogue.*

The question thus presented to this Court is whether such a rescue is the subject of protection under the copyright laws. In other words, is a mere conception of the mind copyrightable? Can a monopoly be created in the

abstract idea of dragging a character from danger, regardless of the play in which it is embodied or of the language used in connection therewith? If it can be done the idea is appellee's exclusive property and taken out of the realm of public property so that it cannot even be described in a book or story.

What is copyright? It is the exclusive right of printing, or otherwise multiplying copies of a published literary work and of publicly vending the same.

4 Amer. & Eng. Ency. of Law, 147.

Mr. Curtis describes it as "the right to multiply copies of what is written or printed, and to take therefore whatever other possession mankind are willing to give in exchange, constitutes the whole claim of literary property. *This claim leaves wholly undisturbed the opportunity of every reader to make an intellectual appropriation of the ideas suggested to him by the characters which he purchases. It goes no further than to assert an exclusive right to the profits which may be derived from the production of successive copies of the characters which in a particular combination, represent a set of intellectual ideas* (italics ours).

Curtis on Copyright, p. 11.

In England the first statutory enactment affording protection by copyright was passed in 1710, and was entitled "An Act for the encouragement of learning by "vesting the copies of printed books in the authors or "purchasers of such copies during the times therein "mentioned" (8 Ann, *c.* 19). Its object is stated to be: "For the encouragement of learned men to compose "and write useful books," and to prevent others from taking "the liberty of printing, reprinting and pub- "lishing, or causing to be printed, reprinted or pub- "lished, books and other writings without the con- "sent of the authors and proprietors of such books "and writings, to their very great detriment and too "often to the ruin of them and their families." It

was not until 1833 that statutory protection was given to the stage performance of a copyrighted dramatic composition (3 and 4 William IV., *c.* 15).

In the United States the first act was passed in 1790, entitled "An Act for the encouragement of learn-" ing by securing the copies of maps, charts and books " to the authors and proprietors of such copies dur-" ing the times therein mentioned" (1 U. S. at Large, 124). In 1831 the statutes were revised and embodied in one act, but gave only the right to muliply copies (4 U. S. Statutes at Large, p. 456). The right to pass these acts finds support in the constitutional power granted Congress to "promote the progress of science " by securing to authors the exclusive right to their " *writings*" (Art. 1, § 8, Clause 8). Thus we see that the statute aims to protect a work, not a mere conception, idea or sentiment apart from its association which is something that is incapable of being identified or owned exclusively (Drone on Copyright, p. 98).

Thoughts are not capable of being copyrighted. Though they be more meritorious than the style, they cannot, independently of the language, be protected. A book which has little or no thought is as much the subject of copyright as would be the writings of a Shakespeare.

In Stowe vs. Thomas, 2 Wall., Jr., 457, Judge GRIER says:

" An author may be said to be the creator or in-" ventor both of the ideas contained in his book and " the combination of words to represent them. Be-" fore publication he has the exclusive possession of " his invention. His dominion is perfect. But when " he has published his book and given his thoughts, " sentiments, knowledge or discoveries to the world, he " can have no longer an exclusive possession of them. " Such an appropriation becomes impossible, and is " inconsistent with the object of publication. The au-" thor's conceptions have become the common prop-" erty of his readers, who cannot be deprived of the

" use of them nor of their right to communicate them " to another clothed in their own language by lecture " or treatise.

" *The claim of literary property, therefore, after pub-* " *lication, cannot be in the ideas, sentiments or the crea-* " *tions of the imagination of the poet or novelist as dis-* " *severed from the language, idiom, style or the outward* " *semblance and exhibition of them.* His exclusive " property in the creation of his mind cannot be vested " in the author as abstractions, but only in the con- " crete form which he has given them and the language " in which he has clothed them. When he has sold his " book the only property which he reserves to him- " self, or which the law gives to him, is the exclusive " right to multiply the copies of that particular com- " bination of characters which exhibits to the eyes of " another the ideas intended to be conveyed. This is " what the law terms copy, or copyright." (Italics ours.)

An author is one who, by his own intellectual labor, produces *a new work*, composed in his own language, thoughts and words.

1 Morgan's Law on Literature, 319.

In Lawrence vs. Dana, 4 Clifford's Rep., 61, a well-considered case, the Court (at page 64) says:

" A copyright of a book, when taken out in due " form, secures to the author or proprietor the sole " right and liberty of printing, reprinting, publishing " and vending such book during the term for which " it is granted, *but it secures nothing more.*" (Italics ours.)

There is scarcely a play of Shakespeare of which the plot was not taken from a tale or history that was popular in his day. " King John," " Richard II.," " Henry IV.," " Henry V.," " Henry VIII.," are taken from Holinshed's Chronicles. " Henry VI." was taken from Hall's Chronicles; " Macbeth " from Holinshed's " History of Scotland," while " King Lear " was taken

partly from Holinshed, Sidney's "Arcadia" and Higgin's "Queen Cordila."

In the light of the reasoning of the well-considered cases in England and this country, appellee's contention cannot possibly be upheld.

English Authorities.

The English copyright statute, 3 and 4 Will. 4 c. 15, protects not only a "dramatic entertainment," but expressly prohibits a reproduction "*of any part thereof.*" It is broader than our statute, which does not in terms prohibit the representation of any part of a drama.

Chatterton vs. Cave, 2 L. R. (C. P. Div.), 42 (1876).

Plaintiff had the sole right of representation of a play called "The Wandering Jew." On the trial only two scenes or points in defendant's drama were found to have been taken from plaintiff's play, but that in every other respect it was not copied from the plaintiff's play. The alleged infringement consisted first, in respect to the final scene of defendant's drama, and second, in the appearance of the wandering Jew, and the stage business connected with that appearance.

COCKBURN, C. J., said:

"The proposition asserted and acted upon by that "Court (C. P.), is that the act of Parliament was "passed for the purpose of protecting dramatic compo- "sitions from being copied when that which is taken is "of substantial value. It was pressed upon us, on be- "half of the plaintiff, that anything taken from a book "or a play would bring the taker within this act, and "that the act did not say that the quantity taken must "be material or substantial. But this act must receive "a reasonable construction, and whilst we are anxious "to protect the property of authors *we must be care- "ful not to withdraw from the common stock of litera- "ture or art that which is of no substantial value.*" (Italics ours.)

On appeal the decision was affirmed (3 Law Rep. Appeal Cases, 483).

Lord COLERIDGE, referring to the findings, said that "two points or situations had been an imitation of "plaintiff's drama. These points so copied were not "parts of the composition or dialogue of the plaintiff's "drama, *but were in the nature of dramatic situations "or scenic effects*" (see p. 484). (Italics ours.)

Counsel for appellants in that case having contended that the parts taken were effective representations and striking dramatic incidents, giving a character to the whole performance (p. 485) Lord BLACKBURN said (p. 501):

"An idea may be taken from a drama and used in "forming another, without the representation of the "second being a representation of any part of the "first. For example, I have no doubt that Sheridan, "in composing 'The Critic,' took the idea from 'The "'Rehearsal,' but I think it would be an abuse of lan-"guage to say that those who represent 'The Critic' "represent 'The Rehearsal' or any part thereof, and, "if it were left to me to find the fact, I should, without "hesitation, find that they do not."

Haufstaengen vs. Empire Palace (No. 1), 7 Rep., 375 (decided 1894):

Plaintiff copyrighted five paintings. Defendants exhibited at their theatre *tableaux vivants* after these pictures; the background being painted canvas and the figures in the foreground being living persons attired to represent the figures in the pictures. Held: not a violation of the copyright, as it was not a reproduction of the picture as such, nor a reproduction of the design of a picture. KAY, L. J., said (p. 381): "This is a case which does not seem to me to come within the meaning of this statute at all. If it did, it would follow, of course, that anybody in his own private drawing room who arranges a *tableau vivant* of his friends or guests in the manner and for the pur-

pose of imitating a group of figures in a well-known picture, would be infringing the Copyright Acts, because the element of doing it for reward or remuneration does not enter into the act at all."

Haufstaengen vs. Empire Palace (No. 2), 7 Rep., 385 (1894):

The defendants published in the "Daily Graphic" illustrations of *tableaux vivant*, representing plaintiff's copyrighted pictures LINDSLEY, L. J., says (p. 393):

"I cannot bring myself to say that the sketches "complained of are, in any fair sense of the word, "*copies* of the plaintiff's pictures or reproductions of "the design thereof, within the meaning of the Statute "to which I have referred."

Hollinrake vs. Transwell, 7 Rep., 568:

Plaintiff copyrighted a sleeve chart consisting of a card-board in the shape of a sleeve with certain curved lines and figures, embodying a method of dispensing with computation and measurement beyond the simple measurement of the actual arm. Lord HERSHELL, L. C., said (p. 575):

"What the plaintiff has sought to protect under the "act for the protection of literary productions *is not a* "*literary production, but an apparatus for the use of* "*which certain words and figures must necessarily be* "*inscribed upon it*" (italics ours).

LINDSEY, L. J., said (p. 577): "It is unnecessary to "consider the question of infringement. But here "again the plaintiff appears to me to fail. The defend-"ant may have got her own idea from that of plaint-"iff's chart, but the defendant has not copied more "than the plaintiff's method of measuring. *Copyright*, "*however, does not extend to ideas, or schemes, or sys-*"*tems, or methods: it is confined to their expression, and* "*if their expression is not copied the copyright is not* "*infringed*" (italics ours). The learned Court thought the method, if novel, might be the subject of a patent,

but this was an attempt to use the copyright act for a purpose to which it is not properly applicable.

DAVEY, C. J., says (p. 599): "The fallacy of the "learned counsel's argument seems to me to lie in a "failure to distinguish between literary copyrights "and the right to patent an invention;" citing with approval Baker vs. Selden, 101 U. S., 99.

Paige vs. Widen, 20 *L. T. N. S.*, 435:

In that case copyright was claimed in a scoring sheet or tablet used in the game of cricket. The tablet consisted of two lines ruled at the foot of the sheet, with spaces in which were marked the totals or number of the runs obtained in the game at the fall of each wicket. At the head of the tablet were the words "Runs at the fall of each wicket." Vice-Chancellor MALINS held that, even if original, it was not a proper subject of copyright. "To say that the particular "mode of ruling a book constituted an object for a "copyright is absurd."

Cable vs. Marks, 42 Law Times Rep., N. S. (Chan. Div.), 432:

Plaintiff claimed to be the proprietor of a book consisting of an envelope with the title printed thereon, containing a piece of cardboard perforated in such a way that the shadow cast by it on a wall or otherwise, roughly imitated a well-known picture. The envelope contained also some descriptive lines, which were not claimed to be original.

BACON, V. C., says: "The object of the Copyright "Act was to protect literary productions, which might "no doubt consist of a single sheet of letter-press. I "am asked to say that this article of the plaintiff's is a "literary production. * * * It is not a literary "production in any sense of the word. In a sense "a stonemason who makes designs for monumental "structures may be said to produce a literary work, "but other stonemasons may go and study from those

" designs and employ their skill in the construction of " others. Nothing can be said against this."

Lord MANSFIELD, in Miller vs. Taylor, 4 Burr., 2303–2396, speaks of copyright as " an incorporeal right to " the sole printing and publishing of something intellec- " tually communicated by letters," and observed that this was the technical sense in which the term had been used for ages.

American Authorities.

Perris vs. Hexamer, 99 U. S., 674:

Complainants were the owners of a copyright of a series of maps of the City of New York, prepared for the use of those engaged in the business of fire insurance. Defendant published a similar series of maps in Philadelphia. At first he used substantially the same system of coloring and signs, and the same key as that adopted by the complainants, but afterwards he changed his system somewhat and of course changed his key.

Chief-Justice WAITE, in delivering the opinion of the Court, said:

" The question we are to consider is whether the " publication of the defendant infringes the copyright " of the complainants, and we think it does not. A " copyright gives the author or the publisher the ex- " clusive right of multiplying copies of what he has " written or printed. It follows that, to infringe this " right, a substantial copy of the whole or of a *material* " *part* must be produced. It needs no argument to " show that the defendant's maps are not copies, either " in whole or in part, of those of the complainants'. " They are arranged substantially on the same plan, " but those of the defendant represent Philadelphia, " while those of the complainants represent New York. " They are not only not copies of each other, but they " do not convey the same information."

Baker vs. Selden, 101 U. S., 99:

The complainant copyrighted a book entitled, "Selden's Condensed Ledger, or Bookkeeping Simplified," the object of which was to exhibit and explain a peculiar system of bookkeeping. The book contained a print or illustration of the system. The defendants having taken the arrangement, suit was brought to enjoin such use. The Court said:

"There is no doubt that a work on the subject of "bookkeeping, though only explanatory of well-known "systems, may be the subject of a copyright; but then, "it is claimed, only as a book. Such a book may be "explanatory either of old systems or entirely new "systems; and, considered as a book, as the work of "an author conveying information on the subject of "bookkeeping and containing detailed explanations of "the art, it may be a very valuable acquisition to the "practical knowledge of the community. *But there is "a clear distinction between the book as such and the art "which it is intended to illustrate. The mere statement "of this proposition is so evident that it requires "hardly any argument to support it.*. The same "distinction may be predicated of every other art "as well as that of bookkeeping. A treatise on the "composition and use of medicines, be they old or "new; on the construction and use of plows, or "watches or churns; or on the mixture and applica-"cation of colors for painting or dyeing; or on the "mode of drawing lines to produce the effect of per-"spective—would be the subject of copyright; *but no "one would contend that the copyright of the treatise "would give the exclusive right to the art or manufacture "described therein.* * * * The difference between "letters patent and copyright may be illustrated by "reference to the subjects just enumerated. Take the "case of medicines. Certain mixtures are found to be "of great value in the healing art. If the discoverer "writes and publishes a book on the subject (as regular "physicians generally do), he gains no exclusive right

" to the manufacture and sale of the medicines; he " gives that to the public. If he desires to acquire " such exclusive right he must obtain a patent for the " mixture as a new art, manufacture or composition " of matter. *He may copyright his book, if he pleases,* " *but that only secures to him the exclusive right of* " *printing and publishing his books. So of all other* " *inventions or discoveries*" (italics ours).

To show how dangerous it would be to give to any one the exclusive right *to the thing* described in a copyrighted work, the Court says:

" The copyright of the book, if not pirated from " other works, would be valid without regard to the " novelty or want of novelty of its subject matter. The " novelty of the art or thing described or explained has " nothing to do with the validity of the copyright. To " give to the author of the book an exclusive property " in the art described therein, when no examination of " its validity has ever been officially made, would be a " surprise and a fraud upon the public; that is the " province of letters patent, not of copyright. The " claim to an invention or discovery of an art or manu- " facture must be subjected to the examination of the " Patent Office before an exclusive right therein can be " obtained, and it can only be secured by a patent from " the Government."

Higgins vs. Keuffel, 140 U. S., 428:

It was held that a label was not a literary production within the meaning of the copyright statute. No more is a scenic effect or the idea or conception of the rescue of a person from a danger that confronts him.

Stowe vs. Thomas, 2 Wall., Jr., 547:

Judge GRIER says (p. 566):

" The author's exclusive property in a literary com- " position or his copyright consists only in a right to " multiply copies of his book and enjoy the profits " therefrom, *and not in an exclusive right to his concep-*

" *tions and inventions* which may be termed the *essence* " of his composition. * * * In questions of in- " fringement of copyright the inquiry is not whether " the defendant has used the thoughts, conceptions, " information or discoveries promulgated by the orig- " inal, but whether his composition may be considered " a *new work* requiring invention, learning and judg- " ment, or only a mere transcript of the whole or parts " of the original, with merely colorable variations. " Hence, also, the many cases to be found in the re- " ports which decide that a *bona fide* abridgement of a " book is not an infringement of copyright " (italics ours).

Lawrence vs. Dana, 4 Cliff. Rep., page 1 :

In that case the Court, at page 78, says :

" Third persons cannot make any use of a patented " invention without the consent or license of the pat- " entee because he acquires by virtue of his letters " patent issued under the patent act the full and ex- " clusive right of making and using his inven- " tion, as well as of vending it to others to be " used for the term allowed by the law ; but the rights " secured to the author or proprietor of a book is only " 'the sole right and liberty of printing, reprinting, " 'publishing and vending such book,' which as con- " sidered by the courts means the exclusive right of " multiplying copies for the benefit of the author or " his assigns (Stephens vs. Cady, 14 How., 529 ; Reade " vs. Lacey, 1 Johns. & H., 526 ; Miller vs. Taylor, 4 " Burr., 2311). Courts have sometimes supposed that " the same rule of decision should be applied to a " copyright as to a patent for a machine, and conse- " quently that an abridgment of an original work made " and condensed by another person without the con- " sent of the author of the original work ought to be " recorded as an infringement. But the language of " of the respective acts of Congress making provision " for the protection of such rights, is different, and the

" opposite doctrine has been too long established to be " considered at the present time as open to contro- " versy."

Martinetti vs. Maguire, 1 Abb. U. S., 536 :

Application was made to enjoin the infringement of a spectacular play entitled "The Black Crook." DEADY, J., at page 361 says :

" 'The Black Crook' is a mere spectacle—in the lan- " guage of the craft, a spectacular piece. It has no pre- " tensions to be called a dramatic composition. *The* " *dialogue is very scant and appears in the light of a mere* " *accessory—a piece of word machinery tacked on to the* " *ballet and tableaux.* The principal part and attraction " of the spectacle seems to be the exhibition of women " in novel dress—or undress—or in striking attitudes " or action. The closing scene is called 'Paradise,' and " consists, as witness Hamilton expresses it, 'of women " lying about loose'—a sort of Mohammedan paradise, " I take it, with imitation grottos and earthly houris.

" *To call such a spectacle a 'dramatic composition'* " *is an abuse of language. An exhibition of model artistes* " *or a menagerie of wild beasts might as well be called a* " *dramatic composition, and claim to be entitled to* " *copyright.* A menagerie is an interesting spectacle, " and so may this be, but it is nothing more. An exhibi- " tion of women, whether in the ballet or tableaux, or " even 'lying round loose' in such a paradise, is not a " dramatic composition and entitled to the benefit and " protection of copyright" (italics ours).

Freleigh vs. Thompson (First Cir., East. Dist. of N. Y., reported 2 Morgan's Law of Literature, 319) :

The defendant, while employed at the Bowery Theatre, in the City of New York, performed a play called "On Hand." The action around which the play centres is as follows: Thompson is the keeper of a draw-bridge over a running stream on which a railroad track is laid. Among the passengers on a train that is

about to run over this track are certain persons whose lives the villain of the play is seeking. The villain contrives to open the draw so that the approaching train may be precipitated into the water, and then disappears. The rumbling of the train is heard louder and louder, when Thompson appears in a boat, takes in the situation at a glance, climbs up on the bridge and turns the draw back into its place in time to allow the train to pass over it in safety.

Held, BENEDICT, J.: *That the complainant's copyright did not give him the exclusive right to this situation.* If he claimed the mechanical contrivance it might be a proper subject for a patent, *but that copyright could not protect the ideas of the situation.*

Ehret vs. Pierce, 10 Fed. Rep., 553:

The complainant, who was in the business of selling paints, originated the idea of affixing to a sheet of paper a number of square bits of paper painted in different colors, each being numbered and corresponding to the color of the paints sold and stating where the paints may be purchased. The defendants deliberately copied this idea and advertised different specimens of their paints by means of pieces of paper cut and pasted in the same manner.

In dismissing the bill the Court said:

"Supposing the plaintiff to have acquired a valid "copyright, * * * it would still be impossible for "him to recover for the reason that the defendant's "card is no infringement upon such a right. What "the copyright laws secure is the exclusive right to "make and sell copies of the copyrighted matter. The "defendant has issued a card to which are attached "square bits of paper of various colors. The colors "on these squares are different from the colors upon "the Morris card. * * * The real matter of the "plaintiff's complaint is not that the defendant has "copied his card, * * * but that the defendant in "advertising his wares has adopted the same method

" pursued by him in advertising his wares, and his " claim amounts in substance to claiming the exclusive " right to multiply that method in advertising. Such " a right cannot, in my opinion, be acquired under the " copyright laws."

Serrano vs. Jefferson (33 Federal Rep., page 265): The complainants claimed the incident of a tank filled with water, used to represent a river into which the villain of the play is thrown. The defendant used in his play a similar tank, into which the heroine is thrown and rescued by the hero. *The complainants showed the importance of that incident, and claimed that they were the first to conceive and produce it on the stage.* In denying the application for an injunction the Court said:

" The plaintiffs have elaborated Mr. Vincent Crum- " meles' dramatic conception of a real pump and wash- " tubs. In the fourth act of their play, entitled " 'Donna Bianca, or Brought to Light,' they set on the " stage a real tank, three feet square and seven feet " deep, filled with natural water. This water flows " through a trough behind a battlement wall at the rear " of the stage, falling into the tank and running off " underneath the stage. The water in this tank and " trough represents a river. It is crossed by a bridge, " upon which, after an angry dialogue between the " hero and the villain of the play, there ensues a " struggle in which the villain falls through the bridge " into the water below. Plaintiffs allege that their " play is copyrighted, and by virtue of that circum- " stance pray for an injunction against the defendants. " These latter are now managing and producing at the " Academy of Music in this city a play entitled 'A Dark " Secret.' Here, too, there is placed upon or set into " the stage a tank considerably larger than the plaint- " iff's tank and trough, also filled with natural water, " and intended to represent the river Thames. Into " this tank the heroine of the play is thrown, after " appropriate dialogue. It is alleged that these immer-

" sion scenes in the two plays are prominent features, and " add greatly to their attractiveness. There is nothing " original in the incident thus represented on the " stage. Heroes and heroines, as well as villians, of " both sexes, have for a time whereof the memory of " the theatre-goer runneth not to the contrary, been " precipitated into conventional ponds, lakes, rivers " and seas. So frequent a catastrophe may fairly be " regarded as the common property of all playwrights. " The plaintiffs' contention is founded solely upon the " circumstance that in their play the river into which " the fall takes place is mimicked by a tank filled with " real water, instead of by an apparatus constructed of " cloth, canvas or painted pasteboard. *Such a mechan-* " *ical contrivance, however, is not protected by a copy-* " *right of the play in which it is introduced.*

Griggs vs. Perrin, 49 Fed. Rep., 15 :

In that case it was held that the " copyright of a " book, describing a new system of stenography, does " not protect the system when considered simply as a " system, apart from the language by which it is ex- " plained, so as to make the illustration by another of " of the same system in a different book, employ- " ing totally different language an infringement " " (Syllabus).

Fuller vs. Bemis, 50 Fed. Rep., 926 :

Held " *that there could be no copyright in a stage* " *dance, though original, because it tells no story, por-* " *trays no character and depicts no emotion* " (italics ours).

We venture to think that this suit would never have been brought but for a decision of the late Mr. Justice BLATCHFORD in 1868, upon a motion *made on affidavits* for an injunction *pendente lite* in a suit brought by the appellees against Henry D. Palmer and Henry C. Jarrett (36 How. Pr. Rep., 207–221).

Palmer and Jarrett produced " After Dark," with a

railroad scene *differing* from the production given by the appellants. They tied the character to the track, and he was rescued *precisely as in appellee's play.* In the case at bar there is no pretense that the appellants produced the scene in that way at any time prior to the filing of the bill, *and not until after the decision of Judge Wallace* that appellee had no valid copyright which gave to the world the right to reproduce the appellee's entire play. Palmer and Jarrett *interposed no answer to the bill* (36 How. Prac., p. 221), *and no proofs on final hearing were ever taken.*

The motion for the injunction was made upon the bill and affidavits, and the entire litigation terminated with the motion based on the charge that the railroad scene was taken *directly and bodily* from appellee's play. The *charge being confessed,* the Court, in the exercise of its discretion, granted an injunction *pending the action.* Dion Boucicault, the author of "After Dark," was not a party to the action, and did not know of its commencement until after the proceedings had terminated (see defendant's answer, Record, pp. 157, 158, read in evidence p. 262, the oath to the answer *not* having been waived by the appellee. See bill, p. 7).

In the Palmer case there was no cross-examination of Mr. Daly showing the extent of his claim or invention, and there having been no disclaimer by him as here of his right to the entire railroad scene and no limitation of his claim to his method of effecting the rescue, the Court exercised its discretion and granted the injunction; the defendants having, as already stated, confessed the charge. Since that decision the questions involved in this suit have not been brought to the Court's attention. In the Court below the learned counsel for the appellee would not reargue the question *de novo,* but vigorously urged the doctrine of *stare decisis.* This Court is not embarrassed by that doctrine, and the question is now presented for the first time, on proofs taken on final hearing.

Second Error.

The rescue, as effected in appellee's play, is not original with him.

A railroad station and train passing the stage in view of the audience is an old incident, well known to playwrights and the public. The record shows its use more than twenty years before the appellee's copyright.

As early as 1840 a waiting room in a railroad station and a train passing the stage appeared in the farce entitled "The Railroad Station" (see Record, p. 255).

The play "Lonely Man of the Ocean," which was produced in 1851, opened with a viaduct and railroad, and the plot of the villain to wreck the train is frustrated just as the train passes safely across the stage in view of the audience (pp. 247-253 of Record).

The appellee contends that to said old incident of a train passing across the stage he added the placing of a character upon the track in danger of his life, *and his rescue by another character*. In this he is clearly mistaken, for in the third volume of "The Galaxy," containing the numbers published between January and April, 1867 (p. 166 of Record), just prior to the appellee's composition, there appeared a story entitled "Captain Tom's Fright," vividly describing the same railroad scene that appears in appellee's play. Captain Tom is there bound to the track, and the thunder of the approaching train, drowning all other sounds, is heard. The train dashes by within a foot of Captain Tom's head on a cut-off (see pp. 184, 185, of Record). This incident tells the same story, and, as held by the Court of Appeals, deprives the appellee of the right to a monopoly in a railroad scene with a character tied to a track in danger of his life. What, then, belongs to him? The removal of the person from the track?

But would that not be the natural thing to do? It would at once suggest itself to any one with even half a mind.

If it be necessary to rescue the hero of a play from such a danger, the simplest way to do so would be to drag him from the track.

In 1850 "The Last Dollar" was produced at the Boston Museum (see Deposition of Susan Remick, p. 197, Record; Defendant's Exhibit Programmes, September 16th, 1850, p. 199 of Record). In the play, a train of cars crosses the stage in view of the audience (Record, pp. 195, 196, 198), and one of the characters was laid across the track and presumably killed by a passing train (see Programme, p. 200; Record, p. 309; diagram marked p. 427, following p. 310 of Record).

The directions for the stage setting, Scene 5, Act 3, is given in the manuscript, as follows:

"A section of Fitchburg Railroad, with the depot "part of the section practical so that a train may run "into the building, the engine and tender first detach-"ing" (see p. 305 of Record).

The original manuscript of the play, with the rough sketch or diagram of the train, was identified and read in evidence (see Deposition, James R. Pitman, Record, pp. 189, 191, 192; also 32, Programmes, p. 193; Catalogue from Boston Museum, p. 201; Deposition of Frederick W. Mozart, Record, pp. 195, 196). While that play was referred to in an affidavit used by Palmer and Jarrett or the motion for an injunction in 1868, the manuscript of the play was *not before* the late Mr. Justice BLATCHFORD. It was secured only after much labor, by the appellants.

In 1834 (misprinted 1888 in record) there was produced a play called "London by Night" (see Defendant's Original Exhibit "London by Night," of which a duplicate will be submitted to the Court on the argument). In the third scene of the second act (pp. 279-281 of Record) *there appears the incident of*

rescue of a character in danger of his life from a passing train by another person.

The learned counsel for the appellee contended in the Court below that this publication must have taken place after 1883, because on the cover is an advertisement containing the date of October 1st, 1883 (p. 280½ of Record). It is obvious that it would hardly be possible to obtain a copy of the *first edition* of the play, and that subsequent reprints should contain advertisements of a later date is natural, but no witness has disputed the statement on the first page of the publication that the drama was "first produced at the Strand Theatre, January 11th, 1844" (misprinted in Record 1884; see original exhibit; see, also, page 430 of Record Preceding. page 259).

Having thus shown that similar incidents have appeared in various publications in evidence the question arises what did the appellee originate? Not the dialogue; not the plot; not the *dramatis personæ;* not a train crossing the stage; not the incident of a character laid across the track in danger of his life from a passing train, and not even the stage business of the removing said character from the track.

Third Error.

If it be assumed that the business of removing a person from a track to save him from being killed by an approaching train was not enacted on the stage prior to appellee's copyright, it is an incident that would naturally suggest itself to the mind of everybody, and is not capable of being copyrighted.

It must be assumed that the appellee will not impugn the conclusion of the Court of Appeals that the record establishes that the railroad scene, the passing

of the train and the fastening of a character across the tracks were singly *and collectively* public property before the appellee wrote his play (see Opinion, Court of Appeals, 56 Fed. Rep., 487, 488).

It follows that the finding of said court cannot be questioned, that the performance, given by the appellants, at Miner's Theater, in the City of New York, in which the character saves himself from the approaching train by staggering against a switch arm, and side-tracking it, is no violation of appellee's rights. That leaves the business of dragging the character off from the tracks *as the sole incident* upon which the decree under review rests. There is nothing original or novel in saving a person from death in that manner. The appearance of the danger would instinctively suggest that as the most natural way of averting it, and surely the idea cannot be monopolized by any playwright. If it can be, no author can hereafter rescue his hero from impending death from a railroad train through the instrumentality of another character. He may have the right to enact a railroad scene and the approach of a train; he may place a character across the track in danger of his life from the train, but he will have to stop there and leave his hero to his fate, unless he can rescue himself. Where this would lead to is well stated in 2 Morgan's Law of Literature, page 321, as follows:

"Let us suppose, for example, that A writes a novel, "in which the interest centres upon the machinations "of a rich and influential personage in love with a lady "who does not return his affection, who causes her "brother to be apprehended (through the services of an "informer), sentenced and transported as a felon, and "then procures his pardon in order to convince the "lady of his magnanimity and to merit her obligations. "Subsequently B publishes a romance containing a "highly-wrought scene where a great temptation is "brought to bear upon a holy recluse to tell a lie to "save the life of one he loves very dearly. Subse-

" quently, still, C composes the story in which, through " the services of a good-natured vagabond and his " faithful dog, a young gentleman (who has been foster- " brother to the vagabond) is saved from hazardous " perils, and ultimately married to a heroine. D mean- " while produces a drama in which, while certain actors " are speaking its dialogue on a stage representing the " interior of a building, the scenes shift before the eyes " of the audience so as to bring them upon its exterior, " or where one actor is shown digging into a stone wall " from the outside while another is digging out of the " the same wall from the inside ; while thereafter E, a " poet, writes a poem, wherein a young army officer, " sent by his government to apprehend a rebel, falls " deeply in love with the rebel's sister and is com- " pelled to struggle between love and duty.

" Now, let us further suppose that F and G are play- " wrights, ever on the alert for a novelty. F, we will " say, brings out at his theatre a drama comprising any " three of the above incidents, while G mounts at his " a spectacle comprising any four of them.

" The question then arises are F and G pirators upon " A, B, C, D and E, or upon any of them? If they " had copied the story or drama or poem of any of the " five, would they have been infringers upon all, in such " a sense as that an action would lie (A, B, C, D and " E holding copyrights, let us say, in their composi- " tions)? Again, supposing that F discovers the simi- " larity which exists between his production and that of " G's, and sues G for piracy. The question as to the " beaten path, or, as it has been termed, ' the romantic " incident,' as can be readily seen, becomes intricate " and perplexing."

The piracy which a court of equity will prevent is one that has a tendency *to supplant* the original or copyrighted work.

Palmer vs. De Witt, 47 N. Y., 532.
Stowe vs. Thomas, 2 Amer. Law Reg., 229.

In Chatterton vs. Cave, 2 Law Rep., C. P. Div., 42, Chief-Justice COCKBURN says:

"It was pressed upon us, on behalf of the plaintiffs, "that anything taken from a book or play would bring "the taker within the Act, and that the Act did not "say that the quantity taken must be material or sub- "stantial; but the Act must receive a reasonable con- "struction, and whilst we are anxious to protect the "property of authors, we must be careful not to with- "draw from the common stock of literature or art that "which is of no substantial benefit."

In Emerson vs. Davies, 3 Story, Cir. Ct. Rep., 768-787, it is said:

"To show that one literary work may have been "suggested by another, or that some parts or pages of "it have resemblances either in method, details or "illustrations, is not sufficient to establish infringe- "ment. The complainant must further show that such "resemblances are so close, full, uniform and striking "as to lead to the conclusion that one is a substantial "copy of the other, or mainly borrowed from it. The "question is whether the work complained of is a "servile evasive imitation of the plaintiff's; whether it "is substantially the same with the one copyrighted."

"If the book of the defendant has virtually the same "plan and character throughout and is intended to "supersede the other in the market, with the same "class of readers and purchasers, by introducing no "considerable new matter or little or nothing new, "excepting colorable deviations, the relief will be "allowed."

Webb vs. Powers, 2 Wood, B. & N., 497-514.
Lawrence vs. Cupples, 9 Off. Pat. G., 254.

It cannot be seriously contended that the *mere fact* of the rescue being made through the help of another person instead of by the imperiled person himself would convert the appellants' play of "After Dark"

to any appreciable extent into a *substitute* for the appellee's play or detract from its value.

There is no evidence in the record that the incident of the rescue accomplished by the assistance of another person, as distinguished from a rescue effected by the imperilled person, himself staggering against the switch and sidetracking the train, possesses any appreciable value. An individual who mingles what cannot be exclusively enjoyed by him with what can, upon familiar principles, forfeits his own peculiar work rather than throw chains around that which is, of itself, as free as air.

The adjudication that the appellants have given 747 performances with a rescue in the manner found by the appellate court to have been violative of appellee's copyright (374) becomes harsh when it is remembered that they were given *after* the determination by Judges WALLACE and COXE that appellee's copyright was invalid, and before the Court of Appeals held otherwise (pp. 361, 342, 369, 370). In view of that determination, the appellee claims the right to sue, and, as matter of fact, has sued, the appellant Brady to recover penalties under Section 4966 of the Revised Statutes at the rate of one hundred dollars for the first and fifty dollars for each subsequent performance.

The Court will thus see how sweeping the decree is, and what a serious burden it imposes on the appellants.

Fourth Error.

There being a material difference between the title of the appellee's play as claimed in the bill and filed in the Clerk's Office and the title as printed, there is no valid copyright.

The bill sets forth the title claimed by appellee as follows: "Under the Gaslight, *a Romantic Panorama of the*

Streets and Homes of New York" (p. 2, fol. 3), and the record of the title, filed in conformity with the Act of Congress, is annexed as an exhibit. It certifies that "Augustin Daly * * * has deposited * * * the title of a book or dramatic composition, the title of which is in the words following, to wit: "Under the Gaslight, *a Romantic Panorama of the Streets and Homes of New York*" (p. 8, fol. 13).

To prove this appellee introduced in evidence the certificate, marked "Plaintiff's Exhibit Certificate of Deposit in Clerk's Office" (p. 142; see, also, "Certificate Defendant's Exhibit 1," pp. 206, 207, of Record). When the book was published, the title was changed as follows: "Under the Gaslight, *a Totally Original and Picturesque Drama of Life and Love in these Times*" (p. 68 of Record).

This presents the legal question whether a title that has been filed with the Clerk of the District Court can be changed when the book is published and the copyright preserved.

In Wheaton vs. Peters, 8 Pet., 592, 593, this Court held that "the security of a copyright to an author, by the Acts of Congress, is not a technical grant of precedent or subsequent conditions. *All the conditions are important. The law requires them to be performed, and consequently their performance is essential to a perfect title.* Every requirement under both the Acts of Congress relative to copyrights is essential to the title. No one can deny that, where the Legislature are about to vest an exclusive right in an author or in an inventor, they have the power to provide the conditions on which such right shall be enjoyed; and that no one can avail himself of such right who does not substantially comply with the requirements of the law" (see pp. 663, 664).

Judge WALLACE in denying the injunction in this suit followed the Wheaton case and said:

"The title to a copyright is purely statutory, and a "performance of the conditions imposed by the laws

" of Congress is indispensable to its creation and to the " existence of any literary property in the published " work (Wheaton vs. Peters, 8 Pet., 591; Merrill vs. " Tice, 104 U. S., 577). Among these condition, the " statutes require the deposit of a printed copy of the " title of the work *before* publication in the proper " office—formerly the office of the Clerk of the Dis- " trict Court of the district of the residence of the " author, and now the Librarian of Congress. A literal " compliance is not requisite; a substantial compliance " is (Callahan vs. Meyers, 128 U. S., 617; Donnelly " vs. Ives, 20 Blatchf., 381; Baker vs. Taylor, 2 Blatchf., " 82; Jackson vs. Walkie, 29 Fed. Rep., 15).

" A verbal difference between the registered title and " the published title would not necessarily invalidate " the copyright; but when the variance is so material " that the substantial identity between the two titles " is doubtful, and might deceive the public into the " belief that they refer to different publications and " themes, it is fatal.

" *It is patent that there is such a material variance* " *in the present case, unless all the title except 'Under* " *'the Gas Light' can be disregarded.* This is not per- " missible. It will hardly do to segregate what the " author has designated and deposited for registry as " the title of his work as a unit, into parts, and treat " one part as the name and the other as descriptive " matter, and eliminate the latter as part of the title. " If such an analysis were ever permissible, it could " not well be made in the present case, because it is " impossible to discriminate between what is the de- " scriptive matter and what is the name. The drama " might have been called 'Under the Gas Light' or " 'A Dama of Life and Love in These Times,' or 'A " 'Romantic Panorama of the Streets and Homes of " 'New York,' and either designation would be equally " appropriate as a name or as descriptive matter. " *When two such names or descriptive terms are incor-* " *porated into the title, each becomes an integral part of*

"*it, and it may be as reasonably contended that one part* "*of the title can be dropped out as that the other can be*" (italics ours).

In Low vs. Rutledge, 33 L. J. N. S. Chan., 717, it appeared that Sampson, Low, Son & *Co.* purchased of Maria S. Cummins the manuscript of the book "Haunted Hearts." In the entry in Stationer's Hall, the names of the publishers were described as Sampson, Low, Son & *Marston*, and the date of the first publication is given as of the *25th* of May, 1864. The correct name of the publishers was "Sampson, Low, Son & *Co.*, and the correct date of publication the *23d* of May, 1864.

It was argued as here that the error was of no consequence.

KINDERSLEY, V. C., says (p. 723): "The 5th and 6th Vict., c. 45, in the 11th Section, provides that a book of registry shall be kept at Stationer's Hall wherein may be registered 'the proprietorship of the copyright of books and assignments thereof.' That registry is to be at all times open to any person, and the officer is required to give a copy of any entry upon the payment of a small fee and such copies are to be received in evidence in all courts and in all summary proceedings and shall be *prima facie* proof of the proprietorship or assignment of copyright; and in the 13th Section it is enacted that it shall be lawful for the proprietor of copyright in any book 'to make entry in the registry book of the Stationer's Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof and the name and place of abode of the proprietor of the copyright of the said book' in the form given in the schedule; and then it provides that it shall be lawful for every such registered proprietor to assign his interest 'by making entry in the said book of registry of such assignment and of name and place of abode of the assignee thereof' in the form given in the schedule; and then the effect of the latter portion of that clause

'is that it is not necessary to assign by deed,' you may assign by means of the entry in the register * * * (p. 724). Well, then, it is contended on the part of the defendants, that although there is what purports to be an entry of an assignment by her (Miss Crimmins) to Messrs. Low, the entry of her proprietorship is not in accordance with the act, and therefore that she was not a registered proprietor according to the act, and that what professes to be an assignment by means of the entry of that assignment upon the registry operates nothing. I am of opinion that argument must prevail, and *one almost regrets to be obliged to come to the consideration of points which are so very technical as these* which I am obliged to consider, *but at the same time they are points not only which a defendant or plaintiff has a right to take, but which are of importance with reference to the carrying out of the clearly-expressed intention of the Legislature, which has thought fit to require, in order to produce certain effects, that certain strict particulars shall be complied with.* It is, in point of fact, a concession of a certain means of assignment, *upon condition*, and in order to acquire the right to that mode of assignment *you must perform the condition which the Legislature has required.* Now, then, 'the time of the first publication' entered upon the registry is 'the 25th May, 1864.' Was that the date of first publication? Of course, for that purpose, I can only look at the bill, because we are upon demurrer, and the bill expressly says, not that the 25th of May was the date of the first publication, but that it was published on "the 23d May." *That* of itself is fatal to the part of registry of proprietorship operating by way of assignment.

"But there is another ground which I think also is fatal. The act requires, among other things, that the name and place of abode of the publisher thereof 'shall 'be registered.' Now, the entry in the registry of the name of the publisher is this: 'Sampson, Low, Son '& Marston.' That is the title of the firm—not the

names of the individuals. Now, though it is probably optional either to enter the name of the firm of publishers, or the names of the individuals composing the firm, if you profess to enter the real name of the firm, you must do so. And looking again at the statement in the bill, I find, in express terms, that the name of the firm is not 'Sampson, Low, Son & Marston,' but 'Sampson, 'Low, Son & Co.' *I am almost ashamed to descend to these minute particulars, but it must be* done; *and it is sufficient for me to say that in my opinion, either of these inaccuracies is quite sufficient to lead me to hold* that the entry of the *proprietorship is insufficient.* * * * " (italics ours).

In Mathieson vs. Harrod, L. R., 7 Eq., 270, the entry in Stationer's Hall was only of the month—not the day of the month the play was published—that is to say, the month of December, 1866. The Vice-Chancellor held the entry fatally defective, approving Low vs. Routldge, but he says: " I should have come " to this conclusion if there had been no decision on " the subject—that the registry of the month of publi- " cation was too loose an expression; for if I held that " the entry of the month was sufficient, the same argu- " ment might be used with respect to the year of publi- " cation. It is quite clear that would not do, *and by* " *permitting any derivation from the terms of the act* " *you introduce great laxity* " (p. 272).

See, also, Higgins vs. Kuffel, 30 Fed., 627.

The Court of Appeals in the case at bar held that the title referred to in the statute is the name which is given to the book and by which it is designated and is to be known; the name by which it is to be called in the speech of the people; by which it is to be inquired after and sold.

We answer that the author having selected a title, the public cannot alter it nor is any evidence in the record that the public made any change. What is protected by the copyright statute is the title

selected and designated by the author. He can make it long or short, descriptive or otherwise. In this case there can be no question as to the title appellee selected, for the bill gives it, and alleges that he originated it. The exhibit annexed to the bill shows the title he filed and bars every other author from using any part of it.

If this decree be affirmed, appellee has succeeded in securing the exclusive right to two titles—the one filed and the other on his book. It will certainly be a violation of appellee's copyright for any one to publish another play entitled "A Romantic Panorama of the "Streets and Homes of New York," as it would be to entitle it "A Picturesque Drama of Life "and Love in These Times." As Judge WALLACE aptly said, neither of these titles can be disregarded. If either, which one?

When a copyright is completed the title is a part of the book, and, as such, protected.

Weldon vs. Dicks, 48 L. J., Chan., 201.

If the appellee can prevent any one from using the name "Under the Gaslight," it must be by virtue of the same copyright which would enable him to prevent the use of the words "A Romantic Pano-"rama of the Streets and Homes of New York."

Counsel argued below that the variance in the title was not material, and that the appellants were not shown to have been misled thereby. That same argument was pressed on the Court in Wheaton vs. Peters, *supra*. It was there argued that the object of the law was to give notice, and that the defendant had actual notice (see Argument, p. 610). But the Court held that all the conditions of the statute were essential, and that none could be dispensed with.

So, in Low vs. Routledge *(supra)*, counsel argued that the error in the registry in Stationers' Hall was of no consequence and that no one was misled; but the Vice-Chancellor held that the objections were such as a

party not only had a right to take, but that where the expressed intention of the Legislature required acts to be done they must be complied with.

Whether the appellants were misled or not by this variance is of no legal consequence. The copyright is either valid or invalid as to everybody. It cannot be valid as to one party because he was not misled, and invalid as to another because he may have been misled. If appellee's contention be sound a copyright can be sustained without the imprint of the statutory notice on the book upon proof that the defendant was not injured thereby. That would lead to an absurdity.

It may be that it is not necessary to show in every case a strictly *literal* compliance and that substantial compliance is sufficient, as stated by Judge WALLACE, but that does not mean non-compliance. It does not mean that one title can be substituted for another, and that protection will be given to the substituted title on the ground that the defendant was not misled.

It is certainly no hardship to require an applicant for a monopoly in his book to follow the provisions of the law which grants it. An applicant for a patent has his claim subjected to critical examination by experts in the Patent Office before the exclusive right is accorded to him, while the applicant for a copyright, without any investigation by any one, acquires a monopoly by merely filing his title, depositing his book and imprinting on it the statutory notice of his copyright. Surely there is no occasion for permitting laxity in such a case. The requirements of the statute, as held in Wheaton vs. Peters, are conditions precedent. To permit the varying of the title by discarding an integral part thereof, and substituting something else in its stead, is coming dangerously close to judicial legislation.

Counsel below placed much reliance upon Donnelly against Ives, 20 Blatchford, 381 (s. c., 18 Fed. Rep., 592), and Carte vs. Evans, 27 Federal Reporter, 861. They were pressed upon the attention of

Judge WALLACE, as appears from his opinion. In the Donnelly case the title filed was "Over One Thousand Recipes. The Lake side Cook Book; a Complete Manuel of Practical, Economical, Palatable and Healthful Cookery," while the book was published with the following title-page; "The Lakeside Cook Book No. 1; a Complete Manual of Practical, Economical, Palatable and Healthful Cookery. By N. A. D." The Court held that: "*The title deposited and the title-page of the book* "*published contain in common the name or des-*" ignation 'The Lakeside Cook Book; a Complete "'Manual of Practical, Economical, Palatable and "'Healthful Cookery.'" The words "One Thou-and Recipes" in the deposited title were not on the title-page of the published book, which contained only 800 recipes, and referring to the omission the Court said: "In determining whether "this book is protected by a copyright the inquiry is "whether its title or name was deposited. Its title-"name is to be gathered from the title or name now "given to it and appearing on its title-page. *There* "*is nothing connected with its title on the title-page that* "*is not found in the title deposited* except the words "'No. 1, and 'By N. A. D.' Everything else—"*the real name and designation of the book as* "*found on the title page—is in the title depos-*"*ited. The words not found in the title deposited are* "*immaterial and no part of the title or name.* The "'By N. A. D.' is merely surplusage, and neather helps "nor harms the title. The 'No. 1' appears to have "been put in, because the same parties in 1878 copy-"righted and published a book called 'The Lakeside "Cook Book No. 2.'" It will be noted that the words "*A Complete Manual of Practical, Economical, Palata-ble and Healthful Cookery*" *were not omitted after the words* "*Lakeside Cook Book,*" *and the Court held that those words were an integral part of the title, and that the title deposited and the title-page*

of the book corresponded, containing the name or designation, "The Lakeside Cook Book; a Complete Manual of Practical, Economical, Palatable and Healthful Cookery." Had the complainants in that case, after filing the title, published the book, with the title "The Lakeside Cook Book, a Manual of Cookery as Carried On at the Lakeside," or the "The Lakeside Cook Book, a History of Life in the Kitchen at the Lakeside," or simply "The Lakeside Cook Book," it would be more in point.

In Carte vs. Evans, on the 11th of March there was filed with the Librarian a title in these words: "Piano Forte Arrangement of the Comic Opera, 'The Mikado, or the Town of Titipu,' by W. S. Gilbert and Sir Arthur Sullivan, by George L. Tracy," and on the 20th of April there were deposited in his office two printed books containing on one staff the pianoforte arrangement of Tracy and on another the vocal score of the opera, with the title, "Vocal Score of the "Midako; or, the Town of Titipu. Arrangement for "Pianoforte by George Lowell Tracy (of Boston, "U. S. A.), of the above-named opera by W. S. Gilbert "and Arthur Sullivan." Another edition was issued containing the pianoforte arrangement and vocal score on the same staff, but without the songs, bearing the same title as the first edition, excepting that the words "Pianoforte Score" were substituted for "Vocal "Score." *Nothing was omitted from the one which was contained in the other, although certain of the words were transposed.* The Court said: "The published "title indicates with perfect certainty that the musical "work contained in it is an arrangement for the piano-"forte composed by Tracy of Gilbert and Sullivan's "opera, entitled 'The Mikado; or, The Town of "'Titipu,' which is what was copyrighted. The only "value of the arrangement was in its connection with "the vocal score, and they must necessarily be pub-"lished together, and some *slight* addition to the title

" of the book would be allowable on that account" (italics ours).

In those cases the titles were the same, while here they are radically different. We do not contend that everything on the title page of the book must appear in the title filed, but that the title filed must *in substance* be continued as the title of the book published. Here we have the complainant's sworn statement in his bill complaint that his title is: " Under the Gas Light, *a* " *Romantic Panorama of the Streets and Homes of* " *New York.*" That is the title he filed; and while it is the title he seeks to protect, his work is published under the title: " Under the Gas Light, *a Drama of* " *Life and Love in These Times.*"

No portion is a sub-title, as counsel argued in the Court below. The words, " A Romantic Panorama of " the Streets and Homes of New York," cannot be omitted, for the reason given by Judge WALLACE, that " *it will hardly do to segregate what the author has* " *designated and deposited for registry as the title of* " *his work*," and that " it may be as reasonably con- " tended that one part of the title can be dropped out " as that the other can be."

Callaghan vs. Myers (128 U. S., 657) was also referred to in the Court below, and is referred to in Judge WALLACE'S opinion. That action was brought to protect the reports of the Supreme Court of Illinois, known as " Illinois Reports." Upon the notice of one volume—*the notice*—not in the title—it was stated that the copyright was entered by E. B. Myers instead of E. B. Myers & Chandler, and the Court simply said that, under the circumstances, as the printed notice contained the name of E. M. Myers, the statute was, substantially, complied with. The statute *gives merely the form* of the notice to be printed on the book, and when that form is *in substance* adopted it is sufficient.

There is nothing to indicate that this question was presented to Justice BLATCHFORD in the Palmer

and Jarrett case. *In reciting the facts set forth in the bill*, the learned Justice said, that, "on August 1, 1867, complainant took the proper steps to secure to himself a copyright by depositing before publication a printed copy of the title of the composition, as author and proprietor, in the Clerk's Office of the District Court of the Southern District of New York, where he resided at the time," etc. He certainly did not pass on this point, though there is a dictum in 2 Morgan's Law of Literature (p. 325) that the question was considered in that case. Where the author obtained that information does not appear.

Fifth Error.

No copy of the book having been deposited in the office of the Clerk of the District Court as required by the statutes in force in 1867, no valid copyright has been obtained by the appellee.

Under the Act of 1831 (4th Statutes at Large, p. 326), an applicant for the copyright of a work was required:

(1) To deposit, *before* publication, a printed copy of his title in the Clerk's Office of the District Court of the district in which he resided.

(2) To deliver a copy of the book within three months *after* publication to the said Clerk.

(3) To give notice on the title page, or the page immediately following, as follows: "Entered according to Act of Congress in the year by in the Clerk's Office of the District Court of " the blanks being properly filled in.

Under the amendment March 3d, 1865, a copy of the book had to be also delivered to the Librarian of Con-

gress within one month from publication, but the failure to do this did not invalidate the copyright, and involved only the payment of a penalty.

To prove the deposit of the title, appellee testified that he deposited a copy of the title in the Clerk's Office of the District Court for the Southern District of New York (p. 12 of Record), and introduced in evidence a copy of the record showing the deposit of the title "Under the Gas Light, a Romantic Pano-" rama of the Streets and Homes of New York" (see Exhibit A, annexed to the Complaint, p. 8, Record; also Complainant's Exhibit Certificate of Deposit in Clerk's Office, p. 142).

As to the second *essential* prerequisite, the deposit of the book in the Clerk's Office, there is *a total failure of proof.* The appellee testified that *he did not recollect depositing a copy of the book in the Clerk's Office* (Record, p. 13). While he remembered the filing of the title on the first of August with the clerk, and believed that he deposited a copy of the book in the office of the *Librarian of Congress* September following (p. 13), *he had no recollection of having ever deposited a copy of the book with the Clerk of the District Court.* An attempt was made to supply the proof by introducing in evidence the following certificate of the Librarian of Congress (p. 142):

"SOUTHERN DISTRICT OF NEW YORK, TO WIT:

"Be it remembered, that on the first day of August, "Anno Domini 1867, Augustin Daly, of the said District, "has deposited *in this office the title of* a book or dra-"matic composition, the title of which is in the follow-"ing words, to wit: 'Under the Gas Light, A Romantic "'Panorama of the Streets and Houses *(sic)* of New "'York,

"'By

"'AUGUSTIN DALY,

"'Author of "Leah, the Forsaken," "Griffith Gaunt,"
"'"Taming a Butterfly."'

" The right whereof he claims as author and proprie-
" tor in conformity with an Act of Congress entitled
" ' An Act to amend the several acts respecting copy-
" ' right.'

" GEO. F. BETTS,
" Clerk of the District.

" *Work deposited this 1st day of August, 1867 :*

" I, A. R. SPOFFORD, Librarian of Congress, hereby
" certify that the foregoing is a true copy of the origi-
" nal record of copyright in the District Court Records
" on file in my office.

" In witness whereof, I have hereunto set
" my hand and affixed the seal of my
[SEAL.] " office this 13th day of December,
" 1889.

" A. R. SPOFFORD,
" Librarian of Congress."

As the words " Work deposited this 1st day of " August, 1887," are *underneath* the signature of " George " F. Betts, Clerk of the District," they are not evidence of the fact. The appellee having failed to call the Librarian as a witness, the appellants called him. He testified that the certificate, Defendant's Exhibit 1, page 207, is a *true copy* of the record of the District Court (p. 204). That certificate conforms precisely to the certificate appellee annexed to his bill (Exhibit A, p. 8). The Librarian further stated that the words " Work deposited this first day of August, " 1867," appearing on appellee's exhibit, are partly in print and partly in writing " *after the signature* George " F. Betts, Clerk " (see the Testimony of A. R. Spofford, p. 204).

That the words beneath the signature of the Clerk are no part of the certificate, and therefore no proof of the deposit of the book, is well settled (Merrill vs. Tice, 104 U. S., 557). Evidently recognizing that to be so, the appellee, ON REBUTTAL (p. 50), called Thomas Alexander, a deputy clerk in the United

States District Court Clerk's Office, who produced a book in the handwriting of one George A. Appleton, a former employee in that office, purporting to be a record kept by him. In the column designated "titles" are the words "Under the Gaslight;" in the column designated "Dates of Deposit of "Copy of Work" is the date "August 1st," and on the same line are the words "Under the Gas "Light," and it is argued that it is some evidence that the work was deposited by the complainant in that office on August 1st, 1867. The witness *had no personal knowledge* and only identified the entries as being in the handwriting of Appleton. As it was a mere memorandum found in the storage room, where "books, accounts, papers, &c., *of no value*" are kept (see Alexander's Testimony, x-Qs. 39-46, p. 55), and *was not required to be kept by law or by order of the Court or by the Clerk, and was not regularly upon the files of the Office* (see Alexander's Testimony, x-Q. 39), the entries are not evidence.

National Ulster County Bank vs. Madden, 114 N. Y., 280.
Carradine vs. Hotchkiss, 120 N. Y., 608.
1 Wharton's Law of Ev., § 643.

In Bradford vs. Bradford, 51 N. Y., 669, 670, the Court held that it was proper to reject a record kept and preserved by the pastor of a church, the keeping of which was optional and not by authority. So the record or docket of a magistrate of the amount and date of a judgment which he is not required to keep, is not a public record (Wickware vs. Bryan, 11 Wend., 545–547; see also Woolfe vs. Washburn, 6 Cowen Rep., 261, 265, 266; Sutton vs. Axbridge, 2 Pick., 436). It was held in Henry vs. Leigh (3 Camp,, 499), that it was improper to prove the allowance of a bankrupt's certificate by the Lord Chancellor, by a book kept in the office of the Secretary of Bankruptcy, although the book was constantly consulted by persons wishing

information respecting bankrupt's certificates, for the reason that the book was not an official book required by law, or by the order of the Lord Chancellor (see also Merrick vs. Wakely, 8 A. & E., 170; Burt vs. Barlow, 1 Doug., 171; Doe vs. Bray, 8 B & C., 813; Whitluck vs. Waters, 4 C. & P., 375; Garvey vs. Wilson, 42 Md., 187).

The book in question was described by Alexander as "a sort of day book," NOT A FILE BOOK OF THE OFFICE (p. 81, fol. 324). It was evidently a mere private memorandum for the convenience of Appleton, to aid him in correctly checking the books he sent to Washington to be filed in the Librarian's Office (p. 51).

But the said book does not identify the work that was deposited. The appellee *does not recollect depositing any work with the Clerk of the Court*, and none was produced or identified by the Librarian of Congress—to whom the works were transmitted by the Clerk under the Act of 1870. He testified that "*no* "*such work as* '*Under the Gaslight*' *was ever filed in* "*his office*," as transmitted from the United States District Court Clerk's Office (see Spofford's Testimony, pp. 204, 205). The book which appellee *believed* he deposited with the Librarian of Congress *September 26th, 1867*, was so deposited (p. 13), *to comply with the Amendment of 1865*. That is of no importance, and has nothing to do with the validity of the copyright, to sustain which there must be proof of a deposit in the District Court Clerk's Office under the law of 1831.

The appellee also failed to show a compliance with the third *essential* prerequisite, the giving of the statutory notice of copyright upon the title page or the page immediately following of each book and edition. The only proof as to that is his evidence as follows (Q. 25, p. 13): "This book bears "the notification, 'Entered According to Act of Con- "'gress in the year 1867 by Augustin Daly, in the "'Clerk's Office of the District Court of the United "'States for the Southern District of New York.'

" Do all copies of this play, printed with your permis-
" sion, bear a similar certificate, *so far as you know?*
" A. They do."

That proves nothing for appellee could manifestly know nothing about the matter. But, if it be entitled to any consideration, it only shows that the notice was somewhere in the book. The notice must be on the title page or the page immediately following, and whether it so appeared there must on the evidence be a matter of a guess. The publication was first made by one Wemyss, who many years ago sold his right to publish to Samuel French & Son (see x-Qs. 130, 131, 167, 168 and 169, pp. 33–42). The appellee was unable to state the number of books published by Samuel French & Son, and did not even know whether they were still selling the work (x-Qs. 167–172, p. 42).

Falk vs. Gash Lith. & Eng. Co., 40 Fed. Rep., 168.

Counsel complained that strict proof is difficult of procurement. It was only necessary to call the publisher or person who has knowledge of the publications, as was done in the Falk case, *supra*, where " complainant presented the affidavits of those of " his employees who have had charge of the prepara-
" tion of all the copies he has published."

Not one of these questions was presented in the Daly vs. Palmer, which, as already stated, was merely a *motion for an injunction pendente lite on bill and affidavits.*

(g) To recapitulate:

First. While *recollecting distinctly* the filing of *the title* in August, 1867, with the Clerk of the District Court, and stating *his belief* as to the deposit of the work in the following September with the Librarian, *appellee had no recollection whatever of the deposit of the work with the Clerk of the District Court;* which failure of proof is not supplied by the evidence of

Alexander identifying the handwriting of Appleton in *a private memorandum book*, or by the memorandum on the certificate (p. 142) *beneath* the signature of the clerk, Mr. Betts.

SECOND. The work deposited with the Clerk—assuming that Appleton's book proves it—*is not identified or produced.*

THIRD. No copy of the work can be found on file in any public office where it should have been filed.

FOURTH. The statutory notice of copyright is not shown to have been published on the title page or the next succeeding page of *every copy of each edition.*

Sixth Error.

There is a total failure of proof of infringement on the part of the appellants.

The bill, sworn to May *19th*, 1889, charges that the appellants agreed to produce "After Dark" at the People's Theatre, in New York, during the week beginning the *20th* of May, 1889, with the "railroad scene," taken from the appellant's play (p. 6).

The proof as to the infringement was given by one Harold Swain. He testified that he attended a performance of the play *in Philadelphia before* the filing of the bill, where a person *suspended* from above in an aperture, in danger of being struck by a passing train, was saved by another person (pp. 17, 18). As that would be no infringement, and is not complained of in the bill, it need not be considered. If it were, the bill would have been demurrable, as the co-defendant Miner is not claimed to have been in any way interested in the Philadelphia performance or to have taken any part therein.

The performances that were to be given during the week *commencing May 20th, 1889*, at the People's Theatre, in New York, are, therefore, the only ones to which the bill can apply. To prove that they infringed, the photograph of a printed poster, said to have been exhibited on the corner of Bowery and Grand street, in New York, showing a scene in which a man, tied across a railroad track, is in danger of his life from a passing train, was introduced in evidence (see Complainant's Exhibit Photograph, p. 208½). *There is not a word of evidence showing who posted it or that it was done by the appellant's authority*, and *no such scene was presented at the People's Theatre*. That was proven by the appellee's own witness, George B. Heath, the *only* witness called to show the character of the performances given at that theatre. He testified that he first saw the play on the night of the 20th, at the People's Theatre, and describes the scene as follows: "The "scene changes to a dark cellar, and Old Tom is "seen going back and forth in an excited manner, and, "going to the left of the stage and putting his ear to "the wall, says he hears voices—Dicey Morris and "some one else—and they are going to kill Gordon "Chumley. He goes around in an excited manner, "saying he cannot save his friend. He goes up a stair "to a lattice window to the right of the stage and "a little higher than his head, and says it is the "underground railway tunnel. He then goes back a "little more, and finally disappears at the right wing. "The scene then quickly changes, by the disappearance "of this cellar, and shows the back part and top of the "underground railroad tunnel and the railroad tracks, "and *Gordon Chumley is seen staggering from side to "side between the rails as though intoxicated or drugged. "Old Tom appears then at the opening at the back part "of the wall, and excitedly asks Chumley to take his "hand, and he will save him, &c. Chumley does not "appear to see him and does not appear to notice him. "During this time sounds which represent the rumbling*

" *and whistling of an engine are heard the right wing,* " *and as Chumley staggers back against the wall the* " *train passes ; but before it gets to the front of the stage* " *the curtain drops ;* it is about three-fourths past when " the curtain gets down " (pp. 35, 36, Record).

He also saw the play the following night, May 21st, concerning which he was asked :

" Q. 17. Did you see any difference in the perform- " ance that night and the night before ?

" A. It was just the same except that I noticed that " *Gordon Chumley staggered against a lever which* " *switched the train.*

" Q. 18. Can you state whether that incident did not " occur the night before ?

" A. I could not see so well, as I was more on a level " with the stage.

" Q. 19. You are not able to say whether, in that " respect, there was a variation, as a matter of fact, or " not ?

" A. No.

" Q. 20. You had not observed that incident on the " first night, as I understand ?

" A. No " (see Testimony of George B. Heath, p. 36, Record).

That is the entire proof on the part of the appellee about the performances *at said theatre* and at the times referred to in the bill, but Swain testified that on *December 20th, 1889—seven months after the filing of the bill* and *six months after the decision of* Judge WALLACE—he saw a performance of " After Dark " *at the Grand Opera House*, in New York, but that evidence was objected to as being incompetent and inadmissible. At the performances at Miner's Theatre—being the infringement alleged in the bill—no character was *laid across* the track or was rescued by another, but the person staggered between the railroad tracks and saved himself by falling against a lever which switched off the train.

On the other hand the appellants presented affirmative proof that they did not infringe. *The appellee having refused to waive the oath to the answer* (see Bill of Complaint), *it became proof in defendants' favor* and was properly read in evidence (p. 162).

Dravo vs. Fabel, 132 U. S., 487.
Conley vs. Nailor, 118 U. S., 127-134.

It shows that the scene at the People's Theatre, from the beginning to the close of the engagement, was as follows:

" One of the characters, Gordon Chumley, comes to " the concert hall of Dicey Morris, known as the " Elysium, by appointment, in order to take up from " Chandos Bellingham a forged draft of his friend Sir " George Medhurst. After paying the money he drinks " some wine which is drugged, and then Morris and " Bellingham put him through a trap door supposed to " lead to the cellar which leads to the tunnel of an " underground railroad. The following scene shows " the cellar, and then follows the scene of a tunnel, with " railroad tracks and switch. Gordon Chumley is seen " walking along the track in a dazed condition from the " effects of the drug, and the sound of an approaching " train is heard. Old Tom, who was in the Elysium at " the time Chumley took on the draft, and who was " also thrown into the cellar, yells at Chumley. While " staggering along in a dazed condition he uncon- " sciously falls against the switch handle, throws the " switch, and the train passes on to the other track. " The engineer, noticing something wrong, whistles " down brakes, and the train stops without crossing " the stage, and the curtain falls " (see p. 151).

Patrick J. McDonald, the stage carpenter at the People's Theatre, confirmed this scene.

See McDonald's Testimony, pp. 163, 164.

Even if it be assumed that the conception of the saving of a character tied across a railroad track from being killed by an approaching train by his being re-

moved from the place of danger by another person is original with the appellee, and that his copyright is valid, appellants made no use of that incident.

Seventh Error.

Appellee abandoned whatever rights he may have had in the railroad scene.

He claims that the "Scamps of London," did not contain a railroad scene until 1868—after the production of his play. If that be so, he is met with the fatal objection that he has acqueiesced in and permitted the publication of the play with that scene since then—*a period of twenty-eight years.*

The appellee was asked (x-Q. 124) as follows:

"x-Q. 124. That play ("Scamps of London") from "1867 has been published to the present time—that "you know?

"A. It has been published in England.

"x-Q. 125. In England and in this country?

"A. Imported to this country.

"x-Q. 126. In which publication since 1868 do you "find any difference between the railroad scene set "forth therein, in Scene 3, Act III., from the railroad "scene claimed by you?

"A. I didn't know the play before; I didn't know that "there were two, or that the books differed at all from "this. I have never read that play. I cannot give an "answer as to whether there is any difference between "two publications of the same play.

"x-Q. 127. That scene as published there and your "scene as claimed?

"A. I claim this is a direct imitation of my scene; "this book published.

"x-Q. 128. I don't ask that question; I limit my

" question to after 1867. Do you claim that from 1867
" the publication of the 'Scamps of London' had a
" scene which you assert is an imitation of the scene
" you invented?

" A. I do, sir.

* * * * * *

" x-Q. 146. You never enjoined the publication of
" The Scamps of London;' no litigation concerning,
" that play?

" A. No, sir.

" x-Q. 147. There was no litigation of any kind be-
" tween you and the parties publishing that play 'The
" Scamps of London?'

" A. No, sir." (pp. 32–34).

The play, as will be seen from "Defendant's Exhibit 'Scamps of London'" was published by Samuel French & Son, who are and were the *authorized publishers* of the complainant's play (see Complainant's Testimony, cross-questions 130, 131, 132, 166, 171, 177 and 178, pp. 33–42). Here, then, is not the case of a secret or surreptituous publication, but of a publication with the knowledge of the appellee *and by his publishers from 1868 to the present time.*

Eighth Error.

There was error in overruling the exceptions to the report of the Master, who compelled the appellant Brady to produce his books and papers and become a witness against himself and render himself liable for the penalties provided in Section 4966 of the Revised Statutes.

See Record, pages 360, 362, 369, 370, 371, 373.

It was error to compel said appellant to produce

the manuscript of his play and to testify against himself.

Bond vs. United States, 116 U. S., 616.
Counselman vs. Hitchcock, 142 U. S., 547,
People *ex rel.* Taylor vs. Forbes, 143 N. Y.. 219.

Whi' v be that his evidence can not be used against him (Callahan vs. Myers, 128 U. S., 617), it might disclose to the appellee sources from which to get evidence. This is violative of the appellant's constitutional protection and is condemned in the cases above cited.

The decree should be reversed with costs to the appellants.

All of which is respectfully submitted.

A. J. DITTENHOEFER,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

Case No. 15,380.

GEORGE P. WEBSTER AND WILLIAM A. BRADY,
Appellants,

vs.

AUGUSTIN DALY,
Appellee.

Term No. 265.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief on behalf of Augustin Daly, Appellee.

I.

This is a suit to enjoin the defendants from producing a portion of a play entitled "After Dark" written by one Dion Boucicault, on the ground that such portion is a colorable imitation of a scene in a copyrighted play written by the complainant and entitled "Under the Gaslight."

The bill of complaint was filed by Augustin Daly, plaintiff, on May 19th, 1889. The defendants, Webster and Brady, appeared and answered.

A motion was made before Circuit Judge WALLACE for a preliminary injunction, which was denied.

The learned Judge wrote an opinion, commencing as follows.

of "American," the words "United States" should be substituted, there would be no variance. Tried by this rule, we find here no variance in the title. The name of the play, the title to be given to it by the public, and by those who may buy and sell it, is "Under the Gaslight;" the words immediately following, between the commas, are a mere description of the general character of the work apparently not intended to be, and not in fact actually used as any part of the title. The very arrangement of the words by the printer and the choice of type tend to show that the author did not mean them for a subtitle, and there is nothing in the record to constrain us to give them any such character."

Daly vs. Webster, 1 U. S. App., 573, 609.

It may be said that the question had been decided by Judge BLATCHFORD in the Circuit Court in 1868.

Almost immediately after the copyrighting and production of the play "Under the Gaslight" in the year 1867, Dion Boucicault composed the play of "After Dark," and one Palmer, in the City of New York, attempted to produce it. A suit was begun in the Circuit Court for the Southern District of New York, by Augustin Daly against the said Palmer and another, and an application was made for a preliminary injunction. The papers upon which that application was made and was opposed were produced by the complainant here. (*Record, pp. 117-130*). The allegations and proofs as to the complainant's copyright in that suit were the same as in the suit at bar. Judge BLATCHFORD decided that Mr. Daly's copyright was valid, that the scene known as the railroad scene in "After Dark" was an infringement of the similar scene in "Under the Gaslight," and granted the preliminary injunction. His decision was reported in *6 Blatch., 256*, and has been considered one of the most important cases relating to copyright and the law of literature.

"In the suit of *Daly vs. Palmer* the defendants * * raised the technical point that the title of the book registered by the plaintiff was 'Under the Gaslight, a Romantic Panorama of the Streets and Houses of New York,' whereas the title of the printed play filed as an exhibit, to show what had been infringed, was 'Under the Gaslight, a Totally Original and Picturesque Drama of Life and Love in These Times,' claiming that the protection of the statute had been lost by this change of title."

2 Morgan's Law of Literature, 325.

Judge BLATCHFORD held that the copyright was valid, saying in his opinion:

> "Before the 1st of August, 1867, the plaintiff composed and wrote a dramatic composition called 'Under the Gaslight,' and on that day he took the proper steps to secure to himself a copyright for the composition under the provisions of the Act of February 3rd, 1831. (*4 U. S. Stat. at Large, 436*), by depositing before publication a printed copy of the title of the composition, as author and proprietor, in the Clerk's Office, etc."
>
> *Daly vs. Palmer, 6 Blatch., 256, 6 Fed. Cas., 1132.*

The precise point was, therefore, after argument, decided by Judge BLATCHFORD in 1868, in a reported and widely published case. From that time to the decision of Judge WALLACE upon the motion for a preliminary injunction in this suit the correctness of Judge BLATCHFORD's views had never been questioned.

Rarely could a case be found where the principle of *stare decisis* should be more vigorously enforced.

The question is a purely technical one and arises on the same allegations as before, with satisfactory proof thereof. The decision has stood unquestioned for more than twenty-seven years. Contracts have been made under it and rights have accrued. No one has ever been injured or prejudiced by it. The defendants occupy the same position as the defendants in the original suit, as assignees of Dion Boucicault. They just escape being privies to the first decision and they assumed their position with full notice and knowledge of the plaintiff's rights.

But if it were a new question, the view of the Circuit Court of Appeals was right and the copyright ought, under the authorities, to be sustained.

It does not appear that any person has ever been misled by the difference between the title as filed and the title page of the printed book; certainly the defendants were not in any way misled; because, before producing the play of "After Dark" they wrote to Mr. Daly's attorneys, showing a full knowledge of his rights in the play of "Under the Gaslight." (*Record, pages 143, 144*).

It appears, too, from the opinion of Judge BLATCHFORD above cited, the certificates of the Librarian of Congress, the record of the Clerk of the United States Court for the Southern District of New York, and the evidence of the parties, that the complainant's play has always been known by its title of

"Under the Gaslight." These facts sustain the impression which every person would derive, that the other words appearing on the title as filed, and the title page as published, were merely description, which could not deceive anybody into doubting the identity of the book, as filed and published, with the book of which the title was deposited for the purpose of obtaining the copyright.

It is to be noted that the description could by no possibility mislead. "A romantic panorama of the streets and homes of New York," by a dramatist, is not a description inconsistent with "A totally original and picturesque drama of life and love in these times."

If the words used in connection with the title as filed with the Court had described a different kind of book, as, for instance, a novel or a history, there might have been ground for a claim that the public might have been deceived, but a "romantic panorama" is not a kind of book. It is an epithet which might be applied to a drama, a poem, or a romance, and when a drama was published by Augustin Daly, under the unusual and striking title "Under the Gaslight," no one could fail to identify it with the book under the same title which he had formerly described as a "romantic panorama."

The Courts have held discrepancies much more serious to be immaterial.

In *Donnelly vs. Ives*, (*20 Blatch*, *381*; *18 Fed. Rep.*, *592*,) the title as filed was:

> "Over One Thousand Recipes. The Lake Side Cook Book. A complete Manual of Practical, Economical, Palatable and Healthful Cookery, Chicago."

The title of the book as printed was

> "The Lake Side Cook Book, No. 1. A Complete Manual of Practical, Economical Palatable and Healthful Cookery, by N. A. D."

This variance was held to be immaterial.

Note that there was more variance in the title itself than in the case at bar. One title was "One thousand Recipes. The Lake Side Cook Book." The other was "The Lake Side Cook Book, No. 1."

Judge BLATCHFORD says:

> "What the statute requires to be deposited is 'a printed copy of the title.' The language is not 'a printed copy of the title page'; that is, a printed copy of the page con-

taining the title. Everywhere in the statute, in reference to the thing deposited, it is 'the title.' What is 'the title'? Section 4927 provides that as soon as 'the title' is deposited, the Librarian of Congress shall 'record the name of such copyright book.' Therefore 'the title' to be deposited and recorded is 'the name' of the book. The record in the Librarian's book must undoubtedly contain as the name, the title deposited.

"But the question is as to what is a sufficient title to be deposited and recorded, when it is seen afterward what is the title page of the book published after the deposit.

"The theory of the copyright statutes is that every book must have a title or name or designation—something short and convenient by which it may be identified in the speech of the people; that that title or name must appear on or in it, when published, on a title page or its equivalent, and that such title or name must have been, before the publication of the book, deposited in the designated office. The copyright to be protected is the copyright in the book. A printed copy of the title of such book is required to be deposited, before publication, only as a designation of the book to be copyrighted. The title is 'a mere appendage, which only identifies, and frequently does not in any way describe the literary composition itself, or represent its character.' The title alone is never protected separate from the book which it is used to designate. (*Jollie vs. Jacques, 1 Blatch, C. C. 618, 627. Osgood vs. Allen, 1 Holmes, 185, 193.*)

"In determining, therefore, whether this book is protected by copyright, the inquiry is whether its title or name was deposited. Its title or name is to be gathered from the title or name now given to it and appearing on its title page.

* * * * * *

"The presence in the title deposited of the words "Over One Thousand Recipes" is immaterial. They are no part of the substantial title. When the title was deposited it may have been intended to put into the book over one thousand recipes. That purpose was afterward changed. Yet the book was published with the same title, substantially. Aside from this, it is sufficient if the title of the published book was deposited, without its being necessary that everything in the paper deposited as a title should be reproduced on the title page of the book afterwards published.

"The requirement as to the deposit of the title having been substantially, in good faith, complied with, (*Myers vs. Callaghan, 5 Fed. Rep., 726, 731, 732*), the objection that the statute as to depositing the title was not observed is not tenable."

18 Fed. Rep., 595.

Without citing *Donnelly vs. Ices*, JUDGE NELSON arrives at the same result in *Carte vs. Evans*, (*27 Fed. Rep., 861.*)

The head note says:

> "If the published title of a book is sufficient to identify it, with substantial certainty, with the registered copyright, the copyright will not be forfeited on account of slight variations between the two."

In that case the title filed was:

> "Piano-forte Arrangement of the Comic Opera, The Mikado, or The Town of Titipu, by W. S. Gilbert and Sir Arthur Sullivan. By George L. Tracy."

The title-page of the published book read:

> "Vocal Score of The Mikado, or The Town of Titipu, Arrangement for piano-forte by George L. Tracy (of Boston, U. S. A.,) of the above-named opera by W. S. Gilbert and Arthur Sullivan."

The Court said:

> "The published title is sufficient to identify it with substantial certainty with the registered copyright, and no one could possiby be misled by the variations between the two."

It will be noticed that the changes in the title in the case last mentioned included both additions and omissions.

In the case of a defect, apparently much more substantial than the variance in the case at bar, this Court held that actual deception is an important element.

A printed title was deposited by E B. Meyers and Chandler. The entry of copyright on the titlepage was by E. B. Meyers alone. The Court says:

> "We think that under the circumstances of the case, as the printed notice contained the name of E. B. Myers, the variance was immaterial, and that the statute was substantially complied with, particularly as it is not shown that the defendants were misled by the variance or induced to do or omit anything because of it."

And the Court held that a statement in the book that the copyright was obtained in 1866, while in fact it was 1867, is to be disregarded, because, while injuring the complainant, it "could cause no injury to any other person or to the public."

Callaghan vs. Myers, 128 U. S., 657.

A title deposited read, "An Outline of the Political and

Economic History of the United States, With Maps and Charts. I. History and Constitution, by Alexander Johnston, M. A. II. Population and Industry, by Francis A. Walker, L L. D." The title of one of the books deposited to complete the copyright read: "United States, Part III. Political Geography and Statistics, Copyright, 1888, by Francis A. Walker." Held that the copyright was not invalid as against one not claiming to have been deceived or misled.

Black vs. Allen Co., (*56 Fed. Rep.*, 764.)

The cases cited by Judge WALLACE to the contrary are distinguishable.

Jackson vs. Wilkie, (*29 Fed. Rep.*, 15), is to the effect that the notice of copyright inserted on the title-page must follow one or other of the formulas prescribed by the Act.

Baker vs. Taylor, (*2 Blatchf.*, 82), also cited by the learned Judge, is not a decision as to the filing of the title, and is criticised in *Callaghan vs Myers* (*5 Fed. Rep.*, 731), where Judge DRUMMOND says:

> "Undoubtedly a majority of the Court, in the case of Wheaton vs. Peters, held that the law must be complied with; but they do not say that if there shall be a slip in any trifling particular, therefore, the author is deprived of all right to the product of his brain and of his hand. Conceding that it is a right which must exist under the law, the question is whether, if that is substantially in good faith complied with, it is not sufficient. It seems to me that it is."

III.

There was no error as alleged in the second Assignment in holding that Daly had complied with all the provisions of the statute.

Upon this point, the Court of Appeals, say:

> "In support of the decree of the Court below, the appellees contended that there was no proof that a copy of the book was delivered, as the statute required, within three months after publication, to the clerk of the District Court for the Southern District of New York where the complainant then resided. The Deputy Clerk of that

Court produced from the said Clerk's Office a day book kept by the copyright clerk. The entries were in the handwriting of such copyright clerk, who was dead. In his lifetime he had charge of the copyright desk, receiving applications for copyrights, preparing the certificates of copyrights, filing books and papers, and forwarding copyright matter to Washington. The book was a book of original entry kept in the regular course of business, daily, as articles were presented. There were entered in the book, the titles of the copyrights; when tendered, the nature of the articles upon which the copyrights were sought; the dates of the applications for them; and the times when the articles themselves were deposited. It was the duty of the clerk who kept the day book, (apparently, a duty imposed upon him, not by any express statute or order of court, but by the directions of his superior officers, and the rules and practice of the office,) on receipt of a work deposited under the copyright law, to make an entry in the last column of the book of the receipt of the deposit. An entry appeared in this book in his handwriting, showing the deposit of 'Under the Gaslight,' on August 1, 1867, which was within the three months. This record, kept by a person in the discharge of a public duty, was competent evidence of the transaction which was therein stated to have occurred, *Evanston v. Gunn*, (99, *U. S.*, 660); *1 Greenl. Ev.* §483; and, in the absence of any proof to the contrary, it was sufficient evidence of the deposit of 'Under the Gaslight,' as alleged."

Daly vs. Webster, (*1 U. S., App.*, 573, 610.)

In addition to the cases cited by the Court, we refer to

Lindsay vs. Cusimano, *12 Fed.* Rep., 503.
U. S. vs. Howland, *2 Cr. C. C.*, 508.
U. S. vs. Kuhn, *4 Cr. C. C.*, 401.
Blackburn v. Crawford, *3 Wall.* 175.
Lewis v Marshall, *5 Pet.*, 470.
Chaffee v. U. S., *18 Wall.* 516.

There was also independent proof of the deposit of the book. The filing of the title on August 1st, 1867, was proved by the certificate of the Librarian of Congress. Another like certificate was produced having underneath the signature the words "Work deposited this first day of August, 1867," (*Record, p. 142*). On proper proof of the deposit of the work on that day,

it would be presumed that the deposit of the title was made before publication, and that the deposit of the work was within three months after publication.

Callaghan vs. Meyers, 128 U. S., 617.

But the defendants' counsel objected to the last mentioned certificate under the rule stated in *Merrell v. Tice*, (*104 U. S.*, *557*) As the Clerk of the Court cannot certify to records not in his possession, and as the Librarian of Congress can only give copies of the records as they appear, since the records were not made by him, *Merrell vs. Tice* renders it impossible to prove the deposit by a certificate. The plaintiff, therefore, resorted to common law proof, and called the witness Alexander. (*Record, pages 50–56.*). Besides his testimony spoken of by the Court of Appeals, he also proved that the copyright clerk during his lifetime kept another book of original entry, a register of certificates which consisted of a number of pages, each one a certificate in the form of the one signed by the Librarian of Congress and produced in evidence. (*Record, pp 55, 56.*) This register of certificates was sent to Washington and it was in the custody of the Librarian of Congress, and he proved that the certificate furnished by him was a copy of the record. (*Record, p. 204, 206.*) The paper, therefore, is shown by testimony to be a copy of an official record, kept by a public officer who is now dead, and it is admissible to prove the fact stated in it, although as a mere certificate it is excluded under the authority of *Merrill v. Tice.* It is not necessary to the validity of records that every line of every entry shall be signed by the official keeping the book.

The copy of "Under the Gaslight" deposited with the Clerk and sent to Washington is not now in the custody of the Librarian of Congress, it having probably been lost with numbers of other copyrighted books in transit to his office. (*Record, p. 206.*) A copy of "Under the Gaslight" was deposited with the Librarian of Congress on September 26th, 1867, (*Record, p. 205*). This has been preserved, and has been compared with the copy of "Under the Gaslight" produced in evidence, with which it agrees word for word, and letter for letter. (*Record, pp. 44, 46.*)

Augustin Daly does not recollect depositing a copy of the book in the Clerk's office, but he remembers the book being printed when it was produced. One Wemyss was authorized to publish the play, and he sold the plates to French & Son, who have since continued to publish it. (*Record, pp. 13, 33.*)

The validity of a copyright is not made to depend upon the preservation of the book deposited with the Clerk.

It was not Daly's fault that his book with many others, was sent to Washington and lost. It is shown that all the copies of his book printed were alike, and that one of them was deposited with the Librarian of Congress in September, 1867. One of the printed books was deposited with the Clerk of the District Court and the evidence is sufficient to show that this copy was like the others, and like the book annexed to the bill and produced on the trial.

Due notice of the copyright was given.

The copies of the play produced bear on the page immediately following the title page the following notice:

> "Entered according to Act of Congress, in the year 1867, by Augustin Daly, in the Clerk's office of the District Court of the United States, for the Southern District of New York."

The same notice appears in the copy filed with the Librarian of Congress in September, 1867.

Daly testified that all the copies printed with his permission bore a similar certificate, as far as he knew. (*Record, p. 13*). It also appeared that the books were printed from plates, which were sold by Wemyss to French & Co. (*Record p. 33*). There was, therefore, the ordinary proof which is attainable in regard to a printed book. It is much more satisfactory than the evidence as to photographs held to be sufficient in *Falk vs. Gast Lith. & Eng. Co.*, (*40 Fed. Rep., 168*), because when books are printed from plates, anything which appears in one copy is, *prima facie*, shown to be in all, whereas there is no presumption that because one photograph is pasted on a card bearing the word "copyright," therefore other photographs have been pasted on like cards.

IV.

The railroad scene was original with Daly, and there was no error as stated in the third Assignment of Error

Daly testified that it was composed and written and produced by him, and the finding of the Circuit Court in his favor on

this question of fact will probably not be re-examined. (*Record, p. 12.*)

The defendants attempted to show that the "railroad scene" was not original with Daly, but had in substance appeared in other publications.

Their allegations in this regard will be considered separat-ly. Most of them were disposed of by Judge BLATCHFORD's decision.

> "Nothing that has been adduced on the part of the defendants affects the validity of the plaintiff's copyright on the question of the originality and novelty of the 'railroad scene' in his play." *Daly vs. Palmer, 6 Blatch, 256; 6 Fed. Cas. 1138.*

(A) SCAMPS OF LONDON. The answer alleges that in 1843 a play was performed in London known as "Scamps of London," written by W. J. Moncrieff, purporting to be founded upon the French play, "Les Bohémiens de Paris". The Third Act, Scene 3 contains a railway scene substantially like that in complainant's play.

It is generally known that plays are from time to time changed to fit them for particular productions.

The defendants produced a printed copy of the "Scamps of London," (*Record, pages 207-244.*) Like most play books, it has no date, and it therefore does not appear that the book produced was published prior to 1867. The burden of proof is here obviously on the defendants. To show that a passage was written by Shakespeare, or prior to the year 1650, it would not be enough to produce Colley Cibber's or Augustin Daly's acting version of one of Shakespeare's plays. But an examination of the printed work will show affirmatively that the book was produced after the publication of "Under the Gaslight." At the beginning of the book appears the synopsis of the play, and its cast as produced at the Theatre Royal, Sadlers Wells, on November 13, 1843. The synopsis includes no railway scene.

Next appears a synopsis and cast as performed at the Royal Victoria Theatre, September 19, 1868, thus showing that the volume produced was printed after the last-named date. The synopsis contains the following lines:

LONELY SPOT on the SOUTHWESTERN RAILWAY.
N. B.—The Incidents in this Scene were Suggested by an American Drama.
The Recognition—My Child! Villainy of Devereux—Fogg Wounded.
LOUISA PLACED UPON THE RAILS.
The Mail Approaches Nearer and Nearer.
LOUISA SAVED BY FOGG.
The Express Train Dashes Along.
Fearful Death of Devereux. Thrilling Denouement.

It appears, therefore, that in the original production of "Scamps of London," no "railroad scene" was contained, but that after the production of "Under the Gaslight," a railroad scene was added, which was, as the play book expressly states, taken from an American drama. Daly swears it was taken from his drama. (*Record, page 33*).

The notice in the play book was probably put there to avoid prosecution by Dion Boucicault, who had produced "After Dark" betwen the production of Daly's "Under the Gaslight," and the revival, in 1868, of "Scamps of London."

However this may be, these facts are plain.

There was a French play called "Les Bohémiens," written prior to 1843. It had, so far as appears, no "railway scene." In 1843 Moncrieff produced an English version called "Scamps of London." It had no "railway scene" On August 12, 1867, Daly produced "Under the Gaslight." It contained the "railway scene," which had a great success and was spoken of all over world. In April and May, 1868, Boucicault assembled the play of "After Dark." Some incidents and the plot he took from the "Scamps of London." He borrowed a title from Wilkie Collins, and he appropriated the "railway scene" from Daly. In September, 1868, the owners of the "Scamps of London" embellished their play with Daly's "railway scene," having the candor, however, to acknowledge the source from which they took it.

They copied from him, not he from them.

(B) Lonely Man of the Ocean. An examination of this play shows that there is no resemblance between any scene in this and the complainant's "railway scene." It may be noted

that the "Lonely Man of the Ocean" was before Judge BLATCHFORD in *Daly vs. Palmer*. (*Record, p. 131.*)

(C) RAILROAD STATION. This play does not appear to have been published before Mr. Daly's "Under the Gaslight," and it has no such "railway scene" as is in Mr. Daly's play, but has a mere reference to a train passing a window.

(D) LONDON BY NIGHT. It does not appear that the book produced was published before 1867. On the contrary, from an advertisement contained on the last page of the cover, it is apparent that the book produced was published after October 1, 1883. (*Record, facing p. 281.*) The last scene is a palpable imitation of the "railway scene" in Daly's play, and has undoubtedly been added to the former play since 1867, precisely as a similar scene was added to the "Scamps of London."

(E) THE LAST DOLLAR. It contained nothing which resembles the "railway scene" in "Under the Gaslight." This play was brought to the attention of Judge BLATCHFORD in the case of *Daly vs. Palmer*. (*Record, p. 140*).

(F) CAPTAIN TOM'S FRIGHT. This was an article in the Galaxy. It described the incident of fastening a man to a track, and the passage of a train. He was, however, not rescued by any one, and the incident was, in its essential features, wholly different from that which appeared in Mr. Daly's play. It is to be noted, too, that Daly never saw the article "Captain Tom's Fright" (*Record, p. 31*). "Captain Tom s Fright" was considered by Judge BLATCHFORD. *2 Morgan's Law of Literature, 324.*

(G) JOHN C. DENHAM'S PATENT. The defendants proved that at the time of the first production of "Under the Gaslight," a stage carpenter named Denham, at Mr. Daly's request, constructed the locomotive and cars used in the "railroad scene;" that he applied for a patent therefor, which was allowed; and that thereupon Mr. Daly made an agreement with him to effect a sale of the model of the imitation locomotive made by the said Denham whenever Daly made a sale of the right to perform the play.

This is wholly immaterial. The patent was never issued. Denham's invention, at the most, was for a mere mechanical contrivance for imitating a train; and a glance at the decision of Judge BLATCHFORD will show that Mr. Daly's rights are not affected by the fact that some one else may have constructed or invented the mechanical means of representing Mr. Daly's play on the stage.

V.

There was no error in holding that the railroad scene was a dramatic composition and entitled to the protection of the copyright laws.

This is a question of fact which this Court will probably not re-examine.

Fuller v Blackpool Winter Gardens and Pavilion Co., 2 Q. B., 429, (1895).

The Circuit Court of Appeals, said:

"Upon the main point of the case, namely, whether the combination or series of dramatic events, (apart from the dialogue) which makes up the particular scene or portion of the play claimed to be infringed, is a dramatic composition, and as such, entitled to protection under the copyright laws; it is necessary to add but little to the exhaustive opinion of Judge Blatchford, reported in *Daly v. Palmer*, (6 *Blatchf.*, 256).

"The same scene in the same play is elaborately discussed by him, and in his conclusion, that it is a dramatic composition, we concur. In plays of this class the series of events is the only composition of any importance The dialogue is unimportant, and, as a work of art, trivial. The effort of the composer is directed to arrange for the stage a series of events so realistically presented, and so worked out by the display of feeling or earnestness on the part of the actors, as to produce a corresponding emotion in the audience. Such a composition, though its success is largely dependent upon what is seen, irrespective of the dialogue, is dramatic. It tells a story which is quite as intelligible to the spectator, as if it had been presented to him in a written narrative.

"The mere exhibition of mechanical appliances to represent incidents, is not to be included within this classifi-

cation. There must be a series of events, dramatically represented in a certain sequence or order. In other words, there must be a "composition" *i. e*, a work invented and set in order, a work of various parts and characters, which, when put upon the stage, is developed by a series of circumstances.

"The particular composition which is the subject of this action may be thus briefly stated:

"An individual is put in peril of his life by being placed by another upon a track over which a railroad train is momentarily expected to arrive, and so fastened that he cannot move from his dangerous position. From this peril he is rescued by a third person, who, surmounting obstacles, succeeds, at the last moment, in releasing him. With very little dialogue, and by the representation of successive incidents, this scene is displayed before the audience; and to its presentation, as the author conceived it, the important incidents grouped in the sequence he devised are essential. Together, they make up his story, or "dramatic composition." In their presentation individually, and without such grouping, there would be no such composition."

Daly vs. Webster, 1 U. S. App., 611.

A portion of the opinion of Judge BLATCHFORD, thus referred to with approval, is as follows:

"The first inquiry is, what is meant, in the act of 1856, by a "dramatic composition"; what is meant by the "public representation" of a dramatic composition, and what is meant by the right to "act, perform, or represent" a dramatic composition, on a "stage or public place." The act of 1856 confers on the author or proprietor of a copyrighted "dramatic composition, designed or suited for public representation," the sole right of acting, performing, or representing the same on a stage or public place, in addition to the sole right to print and publish such composition.

"The latter right must be considered as being conferred by the act of 1831, for, although that act only speaks of a copyright for a "book or books, map, chart, musical composition, print, cut, or engraving," yet, under the language of the act of 1856, a "dramatic composition, designed or suited for public representation," must be regarded as embraced within the act of 1831.

"A composition, in the sense in which that word is used in the act of 1856, is a written or literary work, invented and set in order. A "dramatic composition" is such a work in which the narrative is not related, but is represented

by dialogue and action. When a "dramatic composition" is represented, in dialogue and action, by persons who represent it as real, by performing or going through with the various parts or characters assigned to them severally, the composition is acted, performed, or represented; and, if the representation is in public, it is a public representation. To act, in the sense of the statute, is to represent as real, by countenance, voice, or gesture, that which is not real. A character in a play who goes through with a series of events on the stage without speaking, if such be his part in the play, is none the less an actor in it than one, who, in addition to motions and gestures, uses his voice. A pantomine is a species of theatrical entertainment, in which the whole action is represented by gesticulation, without the use of words. A written work, consisting wholly of directions, set in order for conveying the ideas of the author on a stage or public place, by means of characters who represent the narrative wholly by action, is as much a dramatic composition, designed or suited for public representation, as if language or dialogue were used in it to convey some of the ideas. The "railroad scene," in the plaintiff's play, is undoubtedly a "dramatic composition." Those parts of it represented by motion or gesture, without language, are quite as much a "dramatic composition" as those parts of it which are represented by voice.

"This is true, also, of the "railroad scene" in "After Dark." Indeed, on an analysis of the two scenes in the two plays, it is manifest that the most interesting and attractive dramatic effect in each is produced by what is done by movement and gesture, entirely irrespective of any thing that is spoken. The important dramatic effect, in both plays, is produced by the movements and gestures which are prescribed, and set in order, so as to be read, and which are contained within parentheses. The spoken words in each are of but trifling consequence to the progress of the series of events represented and communicated to the intelligence of the spectator, by those parts of the scene which are directed to be represented by movement and gesture. The series of events so represented, and communicated by movement and gesture alone to the intelligence of the spectator, according to the directions contained in parentheses, in the two plays in question here, embraces the confinement of A. in a receptacle, from which there seems to be no feasible means of egress; a railroad track, with the body of B. placed across it in such manner as to involve the apparently certain destruction of his life by a passing train; the appearance of A. at an opening in the receptacle, from which A. can see the body of B; audible

indications that the train is approaching; successful efforts by A. from within the receptacle, by means of an implement found within it, to obtain egress from it upon the track; and the moving of the body of B. by A. from the impending danger a moment before the train rushes by. In both of the plays the idea is conveyed that B. is placed intentionally on the track with the purpose of having him killed. Such idea, is, in the plaintiff's play, conveyed by the joint medium of language uttered and of movements which are the result of prescribed directions while, in Boucicault's play, it is conveyed solely by language uttered. The action, the narrative, the dramatic effect and impression and the series of events in the two scenes are identical. Both are dramatic compositions designed, or suited for public representation. It is true that in one A. is a woman, and in the other A. is a man; that in one A. is confined in a surface railroad station shed, and in the other A. is confined in a cellar abutting on the track; that in one A. uses an axe, and in the other A. uses an iron bar; that in one A. breaks down a door, and in the other A. enlarges a circular hole; that in one B. is conscious and is fastened to the rails by a rope, and in the other B. is insensible and is not fastened; and that in one there is a good deal of dialogue during the scene and in the other only a soliloquy by A. and no dialogue.

"But the two scenes are identical in substance, as written dramatic compositions, in the particulars, in which the plaintiff alleges that what he has invented, and set in order, in the scene has been appropriated by Boucicault. Nor is this a case of first impression or arrangement of musical notes forming a tune or air is a musical composition, and the author who has invented it and set it inorder and copyrighted it, is entitled to protection. The extent of that protection has been the subject of judicial interpretation:in the case of *D'Almaine v. Boosy*, (*1 Younge & C.*, 288). The plaintiff's proprietors of the copyright of an opera of Auber's and also of another copyright of the overture of the same opera, and also of another copyright of the airs of the same opera, filed a bill in equity to restrain the defendant from infringing such copyrights.

"The defendant had published several of the airs with some alterations, in the shape of quadrilles and waltzes. It was claimed on the part of the defendant, that his work was merely an adaption of the original, and therefore, not a piracy.

"But the Court (Lord Chief Baron Lyndhurst) held, that if the defendant had published the original air, though

with adaptions and harmonies, or for different instruments, it was a piracy, and that it was not like the case of an abridgment, of a book, where the purpose of the abridgement was distinct from that of the work from which it was taken. On this subject, the Court says: 'It is admitted that the defendant has published portions of the opera containing the melodious parts of it; that he has also published entire airs; and that in one of his waltzes, he has introduced seventeen bars in succession containing the whole of the original air, although he adds fifteen others which are not to be found in it; now it has been said that this is not a piracy, first, because the whole of each air has not been taken; and secondly, because what the plaintiffs purchased, was the entire opera and the opera consists not merely of certain airs and melodies, but of the whole score. But, in the first place, piracy might be of part of an air, as well as of the whole; and in the second place, admitting that the opera consists of the whole score, yet, if the plaintiffs were entitled to the whole, a fortiori, they were entitled to publish the melodies which form a part. Again it is said, that the present publication is adapted for dancing only, and that some degree of art is needed for the purpose of so adapting it, and that, but a small part of the merit belongs to the original composers. That is a nice question; it is a nice question what shall be deemed such a modification of an original work as shall absorb the merit of the original in the new composition. No doubt such a modification may be allowed in some cases, as in that of an abridgement or a digest.

"Such publications are, in their nature, original. Their compiler intends to make of them a new use, and not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a bona fide abridgment, because if it contains many chapters of the original work, or such as made that work most saleable, the maker of the abridgment commits a piracy. Now it will be said, that one author may treat the subject very differently from another who wrote before him. That observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles. It is the air of melody which is the invention of the author, and which may, in such case, be the subject of piracy; and you commit a piracy if, by taking, not a single bar, but several, you incorporate in the new work that in which

the whole meritorious part of the invention consists.

* * * * * *

"Now it appears to me that if you take from the composition of an author all those bars consecutively which form the entire air or melody without any material alteration, it is a piracy; though on the other hand, you might take them in a different order, or broken by the intersection of others, like words in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original.

"Now the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance, or by transferring it from one instrument to another, does not even to common apprehensions, alter the original subject, the ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear. The adding variations makes no difference in the principal.' An injunction was granted.

"The views of Lord Lyndhurst in that case, were cited and approved by Mr. Justice Nelson, in this Court in the case of *Jollie v. Jacques*, (*Fed. Cas., No. 7,437*). They are eminently sound and just, and are applicable to the case of a dramatic composition designed for public representation. Such a composition, when represented, excites emotions, and imparts impressions, not merely through the medium of the ear, as music does, but through the medium of the eye as well as the ear. Movement, gesture, and facial expression, which address the eye only, are as much a part of the dramatic composition as is the spoken language which addresses the ear only; and that part of the written composition which gives direction for the movement and gesture, is, as much a part of the composition and protected by the copyright as is the language prescribed to be uttered by the characters. And this is entirely irrespective of the set of the stage, or of the machinery or mechanical appliances, or of what is called, in the language of the stage, scenery; or the work of the scene painter."

Daly vs. Palmer, (*Fed. Cas., 3,552, p. 1135-7*).

The case of *Daly v. Palmer* has stood as one of the chief landmarks of the law of copyright. It has been extensively

reported, e. g., *6 Blatchf., 256; 8 Am. Law Reg., (N. S., 286); 36 How. Pr., 206; 3 Am. Law, Rec. 453; Fed. Cases, 3552;* and often referred to by the Courts, as in *Serrano v. Jefferson, 33 Fed. Rep., 348; Fuller v. Bemis, 50 Fed. Rep., 928; Henderson v. Tompkins, 60 Fed. Rep., 758, 764.*

It is cited thirteen times in *Drone on Copyright*, four times in *Morgan's Law of Literature*, in *Copinger's Law of Copyright, 368*, and in *Wandell's Law of the Theatre, 437.*

A well considered opinion by a distinguished judge which has for twenty-seven years been unquestioned by the Courts and the profession can hardly be departed from.

It decided a question of property, and therefore the decision should be followed, whatever the present opinion of the Court may be.

> "For every one would suppose that after the decision of the Court, in a matter of that kind, he might safely enter into contracts upon the faith that rights thus acquired would not be disturbed. In such a case *stare decisis* is the safe and established rule of judicial policy, and should always be adhered to. For if the law as announced by the Court ought not to stand, it is in the power of the Legislature to amend it, without impairing rights acquired under it." TANEY, C. J., *Genesee Chief vs. Fitzhugh, 12 How., 458.*

But the law is everywhere administered in accordance with the views expressed by Judge BLATCHFORD.

Judge LACOMBE restrained the performance of "any play or drama, representing the scenes, incidents, plot or dialogue of Trilby." *Harper vs. Ranous, 67 Fed. Rep., 904.*

Judge PUTNAM declared the introduction, skeleton and chorus of a topical song subject to copyright. *Henderson vs. Tompkins, 60 Fed. Rep., 758.*

Goldmark vs. Kreling, 35 Fed. Rep., 661, is not a case under the copyright law, but an action to protect an unpublished dramatic piece. Mr. Justice FIELD and Judges SAWYER and HOFFMAN enjoined the defendants from performing "the piano score, or the libretto containing the dialogues, stage business, situations, &c."

In *Chatterton vs. Cave*, Lord COLERIDGE found that there were "two scenes or points of the drama of defendant taken from the plaintiff's drama: 1st the final scene, 2nd of the

appearance of the Wandering Jew and the stage business connected with that appearance." He was of the opinion that these resemblances were unimportant and he directed a verdict for the defendant. This judgment was affirmed on successive appeals, without even a suggestion that there was a reason for affirmance in the fact that such scenes were not the subject of copyright. (*L. R., 10 C. P. 572, 3 App. Cas., 483.*) Indeed Mr. Justice BRETT remarked: "Now it was first said that the subject matter of the action was not the subject matter of copyright; that the Act gives a property in words, but not in situations and scenic effects; but I think that these latter are more peculiarly the subject of copyright than the words themselves." *Chatterton vs. Cave, (33 L. T. N. S., 256)* cited in *Copinger on the Law of Copyright, 350.*

To the same effect is the French law:

> "Quant aux pièces françaises non tombées dans le domaine public, leur plan, l'ordonnance du sujet, la conception et le développement des caractères, l'agencement des scènes, la conduite de la pièce, son action et ses effets, ont une importance capitale, indépendamment du style, de la forme, du langage et du genre de la composition. Il y a donc contrefaçon à faire un semblable travail, même en langue étrangère, sans l'autorisation de l'auteur primitif, et, dans ce cas, la confiscation de la pièce et l'interdiction de la représentation doivent être ordonnées." *Le Senne, Code du Theatre, Imitations de pièces, p. 200.*

The language above quoted is in substance taken from a judgment of the Tribunal of the Seine in a suit brought by Victor Hugo against Baptiste Monnier concerning the Opera known as Lucrezia Borgia. The judgment was affirmed by the Cour de Paris. *Legislation et Jurisprudence des Theatres, Lacan et Paulmier, Vol. II, pp. 267-269.*

The question of the constitutionality of the law of dramatic copyright is not raised by the assignments of error. It has, however, been in effect, passed upon by this Court.

> "By 'writings' in that clause (of the constitution), is meant the literary productions of those authors, and Congress, very properly, has declared these to include all forms of writing, printing, engraving, etching, etc., by which the ideas of the mind are given visible expression." *Lithographing Co. vs. Sarony, 111 U. S., 53.*

Dramatic representation is one of the oldest and most familiar forms by which the ideas of the mind are given visible expression, and the power to secure to authors the exclusive right to their writings involves the power to prevent dramatic representation as well as other forms of publication.

VI.

There was no error in adjudging that Webster and Brady had infringed Daly's copyright.

The Court of Appeals say :

> "The performance of the defendants' play with the scene unchanged (although such performances were had after the suit was begun), and the performance in Philadelphia, with the immaterial change above alluded to, of suspending the imperiled person above the track, sufficiently indicate an intention, on the part of the defendants, to infringe complainant's copyright, unless restrained by a decree of the Court."
>
> *Daly vs. Webster, 1 U. S. App., 614.*

Judge BLATCHFORD, in the case of *Daly vs. Palmer*, discussed the question of infringement at length.*

It is true, as urged by appellants' counsel, that in that case no answer was used to oppose the application for an injunction. This is stated by Judge BLATCHFORD in his opinion, and he further says that there is no denial of the allegation that Boucicault copied his "railway scene" from that of the plaintiff. He does not, however, rest his decision upon the lack of denial, but proceeds to examine the two plays to see whether there is a substantial identity between the "railway scenes." He decides, purely from the comparison of the plays, that there is such a substantial identity.

> "The action, the narration, the dramatic effect and impression, and the series of events in the two scenes are identical."
>
> "But the two scenes are identical in substance as written dramatic compositions in the particulars in which the plaintiff alleges that what he has invented and set in order in the scene has been appropriated by Boucicault."

*Vide, Point V, page 16 supra.

"All that is substantial and material in the plaintiffs' 'railroad scene' has been used by Boucicault in the same order and sequence of events, and in a manner to convey the sensations and impressions to those who see it represented, as in the plaintiff's play."

"The 'railroad scene' in Boucicault's play contains everything which makes the 'railroad scene' attractive, as a representation on the stage."

"The substantial identity between the two scenes would naturally lead to the conclusion that the latter one had been adapted from the earlier one. The charge of actual plagiarism on the part of Boucicault, made in the bill, is not denied. It is hardly possible that the resemblances are accidental, and that the differences are not merely colorable, with a view to disguise the plagiarism.

"The true test as to whether there is piracy or not, is to ascertain whether there is a servile or evasive imitation of the plaintiff's work, or whether there is a *bona fide* original compilation made up from common materials and common sources, with resemblances which are merely accidental or result from the nature of the subject."

Emerson v. Davies, 3 Story, 768, 793.
Daly v. Palmer, (Fed. Cas. 3,552, p. 1135-7.)

It is contended by the defendants that *Daly v. Palmer* is not authority, because here the answer contains a denial that Boucicault imitated Daly's "railway scene." Whatever might have been said on this point, in answer to the application for an interlocutory injunction, is now wholly without force.

The proof of substantial identity proves piracy. *Drone on Copyright, 408.* And it was for the defendant to show that the likeness is not the result of copying (*Id. 430*).

The fact of plagiarism has been adjudged upon the proofs, as in *Daly v. Palmer* it was taken as confessed on the pleadings.

VII.

The Court did not, as alleged in Assignment VI, err in directing the issuing of a perpetual injunction against the defendants, and in directing the entry of the usual decree for an accounting and perpetual injunction.

1 Foster's Federal Practice, §217.

VIII.

The Court did not err in adjudging that Webster and Brady had given seven hundred and forty-seven performances of the railroad scene without the authority of the plaintiff, as alleged in Assignment of Error VII.

This fact was reported by the master, upon sufficient and uncontradicted evidence (*Record, pages 363, 364, 340–362*).

Although the Master made no report on the subject of profits the finding of the number of performances was material. It had appeared in proof that the defendants had several times produced the "railroad scene" with variations in its incidents. The Court of Appeals had held that one of these variations was such as to prevent the performance from being held to be an infringement.

> "It is plain that the author of such a work, where various incidents, in themselves common literary property, are grouped to form a particular story, must be confined, in his claim to copyright, closely to the story he has thus composed, and that another author, who, by materially varying the incidents, materially changes the story, should not be held to be an infringer. To illustrate: In the case at bar the defendants at one time represented their play with no change in its material elements, except that the imperiled person was suspended over the track, a foot or two from the ground, instead of being fastened directly to the track itself. Manifestly the grouped incidents, as thus altered, tell the same story as the complainant's play. On another occasion, however, the defendants' play was so modified that the imperiled person was placed upon the track, so stupified with some drug as to be unable intelligently to direct his own movements, and so environed (the scene is laid in a narrow tunnel) that it seemed reasonably certain he would be in his place of peril when the train arrived. So far, the change of incident made no material change in the story; but he was saved from death *without the aid of any third person*—at one time, by staggering off the rails in time; at another, by striking inadvertently against the operating arm of a switch, which moved, and thus side-tracked the train. This grouping of the incidents, dispensing as it does, entirely with the rescuer, whose efforts to aid, and whose struggles to overcome the obstacles in his (or her) way, are an important part of the

complainant's composition, tells a substantially different story."

Daly vs. Webster, 1 U. S. App., 612.

The Court of Appeals had, indeed, held that certain infringing performances proved on the trial, sufficiently showed the defendant's intent to disregard plaintiff's rights, notwithstanding the performances which were held not to infringe. But conceivably the Supreme Court might think otherwise, and it was clearly within the province of the Circuit Court to adjudge the actual facts in this regard, and to establish the plaintiff's right to the final decree for an injunction beyond any possible doubt in this particular at least.

IX.

The Court did not err in confirming the master's report, and it should not have held that the only unauthorized performances of the railroad scene in "After Dark" were three hundred and nineteen performances given between August 12th, 1889 and July 27th, 1890, and three performances given during August, 1890, and three performances during August 1891, as alleged in Assignment of Error VIII.

The proof of the performances was given before the master by Brady himself.

It is not pretended that the plaintiff had authorized them. On the contrary, he had brought, and was diligently prosecuting this suit to enjoin them.

The ground of this assignment of error must be that the witness Brady did not himself see all the performances which he said were given; he testified that he bought the infringing play of "After Dark" and formed a company for its production. (*Record page, 340, 341.*) When notified not to use the railroad scene, he modified it in Philadelphia, as explained in the opinion of the Court of Appeals, but after Judge WALLACE's decision refusing a preliminary injunction, he produced the scene in the infringing form (*343, 20*) and continued to do so for two whole theatrical seasons and a portion of a third, stopping after the decision of the Court of Appeals.

On three several times he tried to change the scene, but these

efforts lasted not more than three days each (*343*). He travelled with the company for one season (*344*); was stage manager, treasurer and leading man (*350*). The second season he did not travel with the company, but he sent it out to play "After Dark" with the same manuscript, and the same mechanical appliances for the railroad scene; he arranged the route, was in continual correspondence with the company, and received weekly accounts and returns (*351*). He caused to be kept a book, showing where the company performed, from time to time (*356, 357, 358*).

He twice went to see the company and found that they were performing the infringing scene (*358*), and he testified that the scene was intended to be performed in the infringing way (*358, 359*). "The changes in the scene were entirely caused by an attempt to perfect the crossing of the trains; the whole thing was mechanical. No alteration was made in the dramatical action of the scene" (*359–361*).

The dates of beginning and ending the seasons were fixed by the witness's memory. Part of the performances were proved in detail, as to places and dates, from books kept by the witness. Objection was made to his refreshing his recollection from books kept under his direction, and he then proved, generally, the places of performance from his unassisted memory (*358*).

The proof was abundantly sufficient to sustain the master's report.

X.

For the reasons stated in Points VIII and IX there was no error, as alleged in the Assignment IX.

XI.

The Court did not err in confirming the Master's report and the Master did not err in compelling the defendant, William A. Brady, to be a witness against himself as alleged in Assignment of Error X.

In the first place the defendant Brady waived any right to

refuse to testify by being sworn and testifying voluntarily. (*Record, page 340.*)

The objection now taken was first suggested at the close of his direct testimony (*Record, page 360*), and affected nothing but the production of the book of the play of "After Dark," (*Record, page 360*) which was merely cumulative Evidence upon a point already adjudged in favor of the complainant. Besides this, the examination was authorized by *Equity Rule 77*.

XII.

The judgment of the Circuit Court should be affirmed.

STEPHEN H. OLIN,
Of Counsel for the Appellee.

In the Supreme Court of the U[illegible]

OCTOBER [illegible], 1895.

Case No. [illegible]
Term No. [illegible]

GEORGE P. WEBSTER AND WILLIAM [illegible]

vs.

AUGUSTIN DALY.

APPEAL FROM THE CIRCUIT COURT OF THE [illegible]
THE SOUTHERN DISTRICT OF NEW [illegible]

SUPPLEMENTAL BRIEF ON BEHALF OF AUGUSTIN DALY, [illegible]

Washington, March, 1896.

[illegible]
of Counsel [illegible]

The Evening Post Job-Printing House, New York.

Supreme Court of the United States,

OCTOBER TERM, 1895.

Case No. 15,380.

GEORGE P. WEBSTER and WILLIAM A. BRADY,
Appellants,

vs.

AUGUSTIN DALY,
Appellee.

Term No. 265.

Appeal from the Circuit Court of the United States for the Southern District of New York.

SUPPLEMENTAL BRIEF FOR APPELLEE.

The counsel for the appellants having in his printed argument rearranged the alleged errors upon which he relies, it will be convenient to the Court to have a new reference to the points of the appellee's brief, which followed the order in which the appellants originally assigned errors.

I.

Under the head of "First Error" the appellant's brief confuses two distinct propositions, to wit: (*a*) Dramatic compositions are not the subject of copyright except so far as the multiplication of copies is concerned. (*b*) The "railroad scene" is not a dramatic composition.

To establish the first rule counsel quotes the general definition from the 4th American and English Encyclopædia of Law, page 147, omitting however the subsequent statements that musical and dramatic compositions are covered by the statute, and that the exclusive right to perform a play may be secured under it (*Id.*, 155).

He then cites certain general observations of text writers and judges, most of them having no relation to dramatic works, but relating to paintings, sleeve charts, cricket scores, perforated cards, maps, schemes of bookkeeping, labels, abridgements, advertisements of paints, systems of stenography and the like.

In answer, it is enough to say that the subject of dramatic composition has been repeatedly dealt with by Congress. The stage performance of copyrighted plays has been prohibited, and this statute has been enforced by all the Federal Courts for many years, in very numerous cases, without the suggestion being made by any judge, lawyer or text writer that the statute was not within the powers of Congress or the domain of copyright.

The English, French and German law is in this respect the same as ours, and it is absurd to suggest that the whole current of decision is to be reversed, great property rights destroyed and a beneficent statute invalidated because a general definition at the beginning of an encyclopædia article did not include a portion of the subject, which, however, was properly treated two pages further on.

Counsel (p. 11) states that the English statute is broader than ours because it adds "or any part the eof," after the words "dramatic piece."

This is not the view of the English Courts.

In Chatterton *vs.* Cave, 3 App. Cas., 483, 498, Lord O'HAGAN said:

> "It is true as was pressed upon your Lordships that the Act of Geo. 3 does not contain the words "or any part thereof," which are inserted in the statute of Will. 4. But this does not appear to me to create any real distinction between them. Some such words must necessarily be implied in the earlier statute, otherwise the author of a book could not bring his action unless there had been a piracy of the whole of its contents; and any partial appropriation of them could not authorize the claim for a penalty. No one has suggested a construction so manifestly inconsistent with the clear purpose of the Legislature; and it seems to me that all the authorities as to a partial taking are fairly applicable to the *Dramatic Copyright Act*, and, if so, an infringement of it to be penal must be material and of a substantial kind. * * * The question in every case must be a question of fact."

In Stephens' Digest of the Law of Copyright annexed to the report of the Copyright Commissioners in 1878, the words "or any part thereof," are omitted as superflous (p. LXXXII.).

So far as the appellant's brief is addressed to the proposition that the "Railroad Scene" is not a dramatic composition, it is answered in Appellee's Point V., p. 16; but some observations may be made upon the cases cited by appellants.

The decision in *Frelight* v. *Thompson* is given in 2 Morgan's Law of Literature, 319, 320, as follows:

> "Upon argument the Court (BENEDICT, *J.*), held that the mechanical contrivance composing the drawbridge over the running water and the train moving thereupon could not be

> protected by the copyright of the play, but was a proper subject for a patent."

It is interesting to compare this with the pretended citation at page 20 of appellant's brief.

In *Servans* vs. *Jefferson*, 33 Fed., 347, Judge LACOMBE continuing, after the passage cited by appellant, says:

> "The decisions which extend the definition of dramatic composition so as to include situations and scenic effects do not cover the mere mechanical instrumentalities by which such effects or situations are produced. The plaintiffs, upon the argument, referred to *Daly* v. *Palmer*, 6 Blatch., 264, as sustaining their contention. The practicable railroad tracks and the counterfeit locomotives which ran upon them in the two plays, analyzed by Judge BLATCHFORD in *Daly* v. *Palmer*, suggested the name 'Railroad Scene' as generally descriptive of the portions of those plays in which they were introduced. The tracks and locomotives, however, were mere links in an extended chain of incident speech and action, which together represented a series of events concededly novel, and which, in the opinion of the Court, constituted a dramatic composition. Because in both plays there was found the same series of events in the same order, represented in a manner to convey the same sensations and impressions to the spectators, it was held that the representation of the latter was a piracy of a meritorious part of the invention incorporated in the former."

Appellant's counsel may claim the language as well as the italics of the phrase supposed to be quoted from (*Fuller* v. *Bemis*), for no such quotation is to be found in the reported case.

The language of Judge LACOMBE is as follows:

> "Whatever may be the language of the opinion in *Daly* vs. *Palmer*, 6 Blatchf., 264, the decision is not authority for the proposition that complainant's performance is a dra-

matic composition within the meaning of the Copyright Act. It is essential to such a composition that it should tell some story.

It may be but the narrative or representation of a single transaction; but it must repeat or mimic some action of speech, emotion, passion or character, real or imaginary. And when it does it is the ideas thus expressed which become subject of copyright. An examination of the description of complainants' dance, as filed for copyright, shows that the end sought for and accomplished was solely the devising of a series of graceful movements combined with an attractive arrangement of drapery, lights and shadows, telling no story, portraying no character, depicting no emotion. The merely mechanical movements by which effects are produced on the stage are not subjects of copyright when they convey no ideas, whose arrangement makes up a dramatic composition."

Fuller *v.* Bemis, 50 Fed., 926, 928.

II.

The alleged "Second Error" is discussed in our Brief, Point IV., page 12.

III.

The "Third Error" is treated in appellee's Point V., page 16.

It sufficiently appears that the infringement was of a material and important portion of complain-

ant's play, and the correctness of the decision is sustained by the subsequent case of Daly *vs.* Brady, 69 Fed., 285, where the facts are fully stated.

IV.

The "Fourth Error" is discussed in appellee's Point II., page 2.

V.

The "Fifth Error" is considered in our Point III., page 9.

VI.

The "Sixth Error" is considered in our Points VI. and IX.

VII.

The so-called "Seventh Error" was not among the assignments of error made by the appellants (Record, pp. 385–7).

The point is besides absurd. On cross-examination Daly was shown a copy of "The Scamps of London," containing a railway scene. He had never seen the play before with such a scene in it, and pronounced it a copy of his own. He had known the play as

published prior to 1868, without a railway scene, and never knew of the change subsequently made in it. It did not appear that the play of "Scamps of London" had ever been produced in America. It did not appear that the book was widely circulated. It did appear that Daly knew nothing of it. It is idle to argue that he had abandoned his railroad scene because he had not proceeded against the publishers of a printed play which he had never read since it was published in an infringing form.

STEPHEN H. OLIN,
Of Counsel for the Appellee.

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JAMES H. MCKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 265.

GEORGE P. WEBSTER and WILLIAM A. BRADY,
Appellants,

vs.

AUGUSTIN DALY,
Appellee.

APPELLANTS' BRIEF IN REPLY.

A. J. DITTENHOEFER,
Of Counsel.

C. G. Burgoyne, Walker and Centre Streets, New York.—1896.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 265.

GEORGE P. WEBSTER and WILLIAM A. BRADY,
Appellants,

vs.

AUGUSTIN DALY,
Appellee.

Appellants' Brief in Reply.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

I.

This appeal is taken from the Circuit Court of Appeals—*not from the Circuit Court.* The complaint was dismissed at the trial. The plaintiff (the appellee) then appealed to the Court of Appeals, where the decision of the lower court was reversed, and a mandate issued, directing that the usual decree be entered for an accounting and that a perpetual injunction issue with costs. Proceedings were had before a Master, and on his report a final decree was entered on the first day of April, 1893. From the said decree an appeal was taken by the defendants (appellants) to the Circuit Court of Appeals, and on the 7th day of June, 1893, the said decree was affirmed. On the 14th day of

June, 1893, the order and mandate of the Circuit Court of Appeals was complied with, and a judgment entered in accordance therewith. Thereupon this appeal was taken from the said judgment entered on the 14th day of June, 1893, affirming the final decree entered April 1st, 1893, and also from the order of the Circuit Court of Appeals, entered June 7th, 1893, affirming the said decree of April 1st, 1893, and directing a mandate to issue (see pp. 590–593; see citation, p. 395).

The petition of appeal sets forth all the said proceedings in detail, and gives notice that the defendants "do hereby appeal to the Supreme Court of the United States from the order and judgment entered on the 14th day of June, 1893, affirming the final decree entered on the 1st day of April, 1893, and from the order of the United States Circuit Court of Appeals, entered on the 7th day of June, 1893, affirming the final decree entered April 1st, 1893, and directing a mandate to issue affirming the said final decree of April 1st, 1893, and also from the mandate issued in accordance therewith" (pp. 392, 393). It thus clearly appears that this appeal is from the Circuit Court of Appeals to this Court. The appeal was allowed by Judge LACOMBE, who was one of the Judges constituting the Court of Appeals, which affirmed the final decree. The citation on appeal recites that "George P. Webster and William A. Brady have appealed to the Supreme Court of the United States from the order and mandate directing an affirmance of the said decree and from the decree entered in accordance with the said order and mandate" (see p. 395). The allowance and citation thus both show that the appeal is from the Court of Appeals.

While the notice of appeal should appear regular on its face, if the judgment is so set forth that it can be identified by the appellee without ambiguity or mistake it will be held as sufficient (2 Encyclopedia of Plead. and Prac., pp. 216, 217).

The petition and citation are in substance the same as in the Social Circle case (Cincinnati, &c., Co. vs. Interstate Commerce Commission, No. 394).

"What is essential to an appeal is allowance, citation to the appellees or equivalent notice or waiver, and the bringing up of the record at the next term of this Court. Security for prosecution should be taken by the Judge on signing the citation, but, if this duty be omitted or defectively performed, a remedy can be applied here on motion" (Seymour vs. Freer, 5 Wall., 822).

Jerome vs. McCarter, 21 Wall, 17.

II.

Appellee in his supplemental brief says, without any warrant, that the appellants contend, under the head of "First Error," in their main brief, that "dramatic compositions" are not the subject of copyright excepting in so far as the multiplication of copies is granted. No such contention is made. The point that is there made by the appellant is that the incident "of the rescue of one person by another in a play is not in itself the subject of copyright." (P. 7 of Brief:) As the copyright law on its face grants the exclusive right of representation of dramatic compositions on the stage, it is surprising that the appellee should have supposed that such an untenable position was taken by appellants. It is true that the discussion in some of the authorities cited by appellants relates mainly to that portion of the copyright law that grants the exclusive right to multiply copies of what is written or printed, but they were cited for the purpose of enforcing the contention that a mere naked idea or conception of the mind—as the rescue of

one person in danger by another—as distinguished from the same idea clothed in the dialogue of the author, is not capable of being copyrighted.

III.

The citation from Lord O'HAGAN, in Chatterton, against Cave, on page 3 of appellee's supplemental brief is not the language of the Court but only of one of the Lords.

Appellant's reference on his brief to the English statutes is for the purpose of showing that though they in express terms prohibit the use *of any part* of a copyrighted dramatic combination, scenic effects were held not to be protected by a copyright.

Drone likewise calls attention to the omission in our statute of the words "or any part thereof."

Drone on Copyright, 633, 634.

IV.

On page 4 of appellee's supplemental brief it is suggested that on the 20th page of appellant's brief, the language of Judge BENEDICT in Freleigh against Thompson, is not correctly given. An inspection will show that, as the paragraph is not included within quotation marks, it was intended only to give the purport of the decision. The quotation as given in appellee's supplemental brief is taken from Morgan's "Law of Literature."

V.

It is a fact that Judge BLATCHFORD in Daly against Palmer decided what Judge LACOMBE cites in Serrano against Jefferson (33 Fed. Rep.), as set forth in appellee's supplemental brief, but it would have been pointless to have added it to the citation contained in appellant's brief.

VI.

Referring to the captious criticism on page 4 of said supplemental brief, of what is stated on page 22 of appellants' main brief, concerning Fuller against Bemis, in the hasty revision of the proofs, the fact that the language in question was improperly included within quotation marks was overlooked, but it is a correct epitome of the syllabus, which is as follows: "A stage dance illustrating the poetry of motion, by a series of graceful movements, combining attractive arrangement of drapery, lights, and shadows, but telling no story, portraying no character, and depicting no emotion, is not a dramatic composition within the meaning of the Copyright Act." It hardly seems worth while for appellee to have wasted time in making this criticism. To shorten the brief, already too long, the syllabus instead of the more lengthy decision was quoted from. If we were inclined to be equally hypercritical, we would be able to show that the language of Judge LACOMBE is not given with entire accuracy in appellee's supplemental brief.

VII.

On page 6 of said supplemental brief, it is claimed that appellant's "Seventh Error" is not included in the assignment of errors made by them. It is not pretended that the errors as set forth on page 6 of appellant's brief are in the exact language of the record (pp. 385-87), but the "Seventh Error" is fairly embraced within the language of the 6th and 11th assignments of error contained in the record. The answer in said supplemental brief to appellant's argument, that Mr. Daly abandoned whatever rights he had, is that he did not know that the "Scamps of London," as published in 1868, contained the railway scenes. In reply to this it is only necessary to quote from his testimony.

"x-Q. 122 (Record, p. 32:) You commenced an ac-
"tion against Jarrett and Palmer in 1868, did you not,
"to enjoin the railroad scene?

"A. I think that is the date.

"x-Q. 123. That is the date. And do you know
"whether, at that time, the defendant produced the
"publication entitled 'Scamps of London?'

"A. I think they did.

"x-Q. 124. That play 'Scamps of London' from
"1867 has been published to the present time, that
"you know?

"A. It has been published in England.

"x-Q. 125. In England and in this country?

"A. Imported to this country.

"x-Q. 126. In which publication, since 1868, do you
"find any difference between the railroad scene set
"forth therein in Scene 3, Act 3, from the railroad
"scene claimed by you?

"A. I didn't know the play before—I didn't know
"there were two or that the books differed at all from
"this. I have never read this play—I cannot give an
"answer as to whether there is any difference in the
"two publications on the same play.

"Q. 127. That scene as published there and your "scene as claimed?

"A. I claim this is a direct imitation of my scene. "This book published—

"x-Q. 128. I don't ask that question. I limit my "question to after 1867. Do you claim that from 1867 "the publication of the "Scamps of London" had a "scene which you assert is an imitation of the scene "you invented?

"A. *I do, sir.*

"x-Q. 161. Then the first you say you heard of "'Les Bohemians' or its translation or adaptation, "'The Scamps of London,' was when Jarrett and "Palmer, in 1863, produced it in opposition to your "motion for injunction?

"A. *That was the first I heard.*"

VIII.

The cases cited on page 10 of appellee's *main* brief may be divided into two classes: *(a)* Those holding that *official* records, such as the registry of burials, of baptisms, of weather reports, etc., are admissible in evidence, and *(b)* those holding that books of private individuals kept in the regular course of business may be admitted. The book in question kept by Appleton belongs to neither class, and the entry therein does not show what the book it is claimed was deposited was; it simply gives the title. The appellee testified that he did not remember depositing the book with the Clerk of the Court (p. 13 of Record) and the entry in the Appleton book. It merely shows that some book with the title "Under the Gaslight" was deposited, but what its contents were does not appear. As it is, "Under the Gaslight" is not the title of the book copyrighted, but "Under the Gaslight, a Drama of

Life and Love in these Times." While appellee proved the contents of the book that was deposited with the Librarian of Congress, there was no evidence whatever as to the contents of the book to which the entry in Appleton's book refers.

IX.

Appellee, on page 13 of his *main* brief, says that it does not appear when the "Scamps of London" was published, nor that during the production of the play at the Sadler's Wells Theatre November 13, 1843, there was a railroad scene. The record (p. 209) contains the "Scamps of London" showing that it was first performed at Sadler's Wells Theatre November 13, 1843. On the same page follows a statement containing the names of the persons who painted the scenery, arranged the music and dresses for that performance, and under whose direction the production was given, etc., and in the synopsis under this occurs the following: "*The terminus of the Birmingham Railways* presents much the same scene as the Depot des Messageries, Rue Notre Dame des Victoires" (see p. 209). *After this* follows the statement as to the performance given in 1868 at Royal Victoria Theatre, which shows a difference in the cast of characters and change in the language of the synopsis.

A. J. DITTENHOEFER,
Of Counsel.

TRANSCRIPT OF [illegible]

SUPREME COURT OF [illegible]

OCTOBER [illegible]

No. [illegible]

[illegible]

WILLIAM [illegible]

[illegible]

W. H. DODGE, [illegible]
JACOBSON, [illegible]
GRATH,

APPEAL FROM THE [illegible]